

91-373

Supreme Court, U.S.

U. S. C. D.

SEP 3 1991

OFFICE OF THE CLERK

No. _____

In The
Supreme Court of the United States
October Term, 1991

◆
ANGEL FIGUEROA VIVAS,

Petitioner,

vs.

◆
PUERTO RICO,

Respondent.

◆
**Petition For Writ Of Certiorari
To The Supreme Court Of Puerto Rico**

PETITION FOR WRIT OF CERTIORARI

◆
ISRAEL ROLDAN GONZALEZ
USDC-PR 115602
Attorney for Petitioner
44 Progreso Street
Aguadilla, P.R. 00603
Tel. (809) 891-1359



QUESTIONS PRESENTED

- 1) Whether once the Puerto Rico Supreme Court initiated a procedure of disbarment because a complaint filed against the herein petitioner by the President of the Senate of Puerto Rico, author of the law which provoked a change in that procedure constitutes a violation of petitioner's due process.
- 2) Whether the Puerto Rico Supreme Court in setting aside its own rules, determines en banc probable cause against petitioner and goes on to pass judgment against petitioner over the same charges it ordered to be filed, constitutes a violation of petitioner's due process.
- 3) Whether the whole disbarment complaint and procedure was tainted with political motivation, and if that constitutes a violation of petitioner's constitutional rights.
- 4) Whether Judge Hernandez Denton, knowing that his law clerk was the daughter of the Delegate District Attorney that was representing the Special Independent Prosecutor against petitioner, should have disqualified himself from the process.
- 5) Whether Judge Victor Pons and Judge Hernandez Denton, having been campaign director for the Popular Democratic gubernatorial candidate, should have disqualified themselves from this process due to the political implications and connotations of the same.

PARTIES TO THE PROCEEDINGS BELOW

The parties before the Puerto Rico Supremo Court were Angel Figueroa Vivas, Petitioner herein, and the Puerto Rico Office of the Special Independent Prosecutor.

TABLE OF CONTENTS

	Page
Questions Presented	i
Parties To The Proceedings Below	ii
Table of Contents	iii
Table of Authorities	iv
Petition For Writ of Certiorari	1
Opinion Below	1
Jurisdiction.....	1
Constitutional and Statutory Provisions Involved...	2
Statement Of The Case	3
Reason For Granting The Writ.....	4
Due Process and the Puerto Rico Supreme Court...	5
Due Process.....	9
Undue Procedure Exerted By The Special Independent Prosecutor	12
Fair Play By The Special Independent Prosecutor...	13
Cruel And Unusual Punishment	14
Self-Incrimination.....	15
The Conclusion Reached By The Supreme Court of Puerto Rico, a Matter Of Credibility Unjustly Adjudicated.....	15
How Independent Is The Special Independent Prosecutor	29
Law 1 and Partisan-Politics.....	30
Conclusion	30

TABLE OF AUTHORITIES

	Page
CASES	
Galvan v. Press, Cal. 1954, 74 S. Ct. 737, 347 U.S. 522.....	5
Lung v. O'Checkley, D.C.N.M. 1973, 358 F. Supp. 928, Affirmed 94 S. Ct. 159, 414 U.S. 802	12
Minsk v. U.S., C.C.A. 1942, 131 F. 2d. 614, Affirmed 63 S. Ct. 141, 319 U.S. 463.....	11
Mora v. Torres, 113 F. Supp. 309, Affirmed 206 F.2d 377.....	2
In Re Murchinson, 349 U. S. 133, 75 S. Ct. 623 (1955)	4, 6, 28
Offutt v. United States, 348 U.S. 11, 75 S. Ct. 11.....	28
Radio Position Finding Corp. v. Bendix Corp., D.C. Md. 1962, 205 F. Sup. 850, Affirmed 83 S. Ct. 548, 371 U. S. 577	5, 28
Tomey v. State of Ohio, 273 U.S. 510, 47 S. Ct. 437, 71 L. Ed. 749.....	5
U.S. ex Scolari v. Bonmiller, D. C. Pa. 1961, 198 F. Supp. 872	2
U.S. v. Romano, C.A. Mass. 1978, 583 L. Ed. 1	5
CONSTITUTIONS AND STATUTES	
28 U.S.C. 1258(3)	1
Rule 10.1(c) United States Supreme Court.....	1
Rule 13(e) of the Rules of the Puerto Rico Supreme Court	7
4 L.P.R.A., Sec. 883	19
31 L.P.R.A. 90 NT	4
31 L.P.R.A., Sec. 3271	19
32 L.P.R.A., Sec. 2045, repealed 1979	19

No. _____

In The

Supreme Court of the United States

October Term, 1991

ANGEL FIGUEROA VIVAS,

Petitioner,

vs.

PUERTO RICO,

Respondent.

**Petition For Writ Of Certiorari
To The Supreme Court Of Puerto Rico**

PETITION FOR WRIT OF CERTIORARI

OPINION BELOW

The opinion of the Supreme Court of Puerto Rico was entered on February 21, 1991 and appears reprinted in Appendix A on page 1. This Court order granting extension of time to file a Writ of Certiorari appears reprinted in Appendix B on page 157.

JURISDICTION

This Court's jurisdiction is invoked under 28 U.S.C. 1258(3) and Rule 10.1(c) of the United States Supreme Court Rules.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the Constitution of the United States provides that:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Fifth Amendment applies to the Puerto Rico Commonwealth of Puerto Rico. *Mora v. Torres*, 113 F. Supp. 309, Affirmed 206 F. 2d 377.

The Fourteenth Amendment to the Constitution of the United States provides that:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Due Process of Law, as used in this amendment to restrain action by states, means substantially the same as in Amendment Five. *U. S. ex. rel. Scoleri v. Bonmiller*, D. C. Pa. 1961, 198 F. Supp. 872.

STATEMENT OF THE CASE

Petitioner Angel Figueroa Vivas was admitted to the practice of law on June 26, 1973. He became the Director of the Special Investigations Bureau of the Department of Justice. His performance and good reputation was never questioned, as it was attested by the former United States Attorney General William French Smith on a letter addressed to petitioner on September 2, 1982. (Appendix C on page 158).

On July 25, 1978 two members of a subversive group called the "Armed Revolutionary Movement" were killed by the police at Cerro Maravilla. This group was known and responsible for the placing of explosive artifacts. (Appendix A, on page 17). Petitioner was one of the district attorneys assigned to investigate the events that occurred at "Cerro Maravilla".

This incident became the main political issue during the 1980, 1984 and 1988 political campaign in Puerto Rico. The governor of Puerto Rico at the time of the incident here referred to and until 1985 was a member of the New Progressive Party. This political party is traditionally identified with the Republican Party of the United States and favors that Puerto Rico become a state of the Union.

As a result of the 1980 elections, the Senate was controlled by the Popular Democratic Party. This party is traditionally identified with the Democratic Party of the United States and favors the Commonwealth as the political status for Puerto Rico. The Honorable Miguel Hernández Agosto was elected President of the Senate on January 1981.

On May 30, 1984 (five months before the 1984 elections), the president of the Senate filed before the Supreme Court of Puerto Rico a complaint against petitioner and other prosecutors that were involved in the investigation of the "Cerro Maravilla" incident. The Puerto Rico Supreme Court initiated disbarment procedure. (Appendix D on page 160).

The Puerto Rico Supreme Court said then (Appendix D on page 160):

"This Court, as a constitutional forum, by virtue of its inherent faculty of regulating everything related to the exercise of the legal profession in its varied aspects, in particular its disciplinary jurisdiction conscious of its duty of "protecting and promoting the independence of the judicial power as a factor of equilibrium in the government structure of our system of democratic life". (Canon XIII of Judicial Ethics).

As a result of the 1984 elections, the Popular Democratic Party came to power on January 1985. On January 9, 1985 the President of the Senate Hon. Miguel Hernández Agosto presented Senate Bill 13; and within nine days, it was approved by the Senate, the House of Representatives, and signed into law by the new governor Rafael Hernández Colón as Law Number 1 of January 18, 1985 (31 L.P.R.A. 90 NT). Appendix E on page 165.

The Legislative Assembly, in its endeavor of maintaining its political point of view, created the Office of the Special Independent Prosecutor through Law No. 1 of January 18, 1985 with extraordinary powers and with a very high budget for the office which would be in charge of the disbarment proceedings. As a consequence of the approval of said law, the Supreme Court left without effect the procedure it had previously established. (Appendix F at page 186).

A new procedure was established and petitioner was disbarred by the Puerto Rico Supreme Court in what, as petitioner contended, constituted a flagrant violation of due process.

REASON FOR GRANTING THE WRIT

In re Murchinson, 349 U. S. 623, 625, 75 S. Ct. 623, 625, this Honorable Court said:

A fair trial in a fair tribunal is a basic requirement of due process. Fairness, of course,

requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness. To this end, no man can be a judge in his own case, and no man is permitted to try cases where he has an interest in the outcome. That interest cannot be defined with precision. *Circumstances and relationships must be considered.* This Court has said, however, that "Every procedure which would offer a possible temptation to the average man as a judge * * * not to hold the balance nice, clear, and true between the State and the accused denies the latter due process of law." *Tomey v. State of Ohio*, 273 U.S. 510, 532, 47 S. Ct. 437, 444, 71 L. Ed. 749. Such a stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weight the scales of justice equally between contending parties. But to perform its high function in the best way "justice must satisfy the appearance of justice." *Offutt v. United States*, 348 U.S. 11, 14, 75 S. Ct. 11, 13.

Fair Play is the essence of due process, *Galvan v. Press*, Cal. 1954, 74 S. Ct. 737, 347 U. S. 522. This clause is a shield against unfair or deceptive treatment of an accused by the government. *U. S. v. Romano*, C.A. Mass. 1978, 583 L. Ed. 1. Due process prohibits Congress from enactments which shock sense of fair play. *Radio Position Finding Corp. v. Bendix Corp.*, D.C. Md. 1962, 205 F. Supp. 850, Affirmed 83 S. Ct. 548, 371 U.S. 577.

Due Process and the Puerto Rico Supreme Court

The Supreme Court of Puerto Rico called this a "unique case in the scope of our disciplinary jurisdiction." This case is so "unique" that we do not recall any other disbarment initiated by the Legislative Assembly of Puerto Rico, specifically the Senate.

After the Puerto Rico Supreme Court determination that the Office of the Special Independent Prosecutor created by Law 1 was to assume the responsibilities of the Panel of Special Examiners with regards to disciplinary action, the office of the Special Independent Prosecutor filed on an informative motion before the Supreme Court of Puerto Rico, on August 7, 1985. This motion was signed by Special Prosecutor's delegated attorney Maricarmen Ramos de Szendry. (Appendix G on page 189). On August 19, 1986, a second motion was filed before the Supreme Court of Puerto Rico, also signed by Maricarmen Ramos de Szendry on behalf of the Special Independent Prosecutor. (Appendix H on page 194).

In these motions the Special Independent Prosecutor submitted to Puerto Rico Supreme Court a proposal of charges of disciplinary actions against the herein appearing party and other attorneys. This is extremely important because they also submitted to the Puerto Rico Highest Court reports and abundant testimonial evidence (written statements), and documentary evidence on which it relied to sustain its charges.

After studying, examining, evaluating and pondering this evidence submitted by the Special Independent Prosecutor, the Puerto Rico Supreme Court *en banc* issued a Resolution exonerating one of the complainers of parties and determining cause against the rest, including the herein appearing party. (Appendix I on page 197).

It is clear that the Honorable Judges who participated in determining cause in the manner in which it was done were completely contaminated with the evidence presented by the Special Independent Prosecutor.

The Supreme Court of the United States, in the case of *In Re Murchinson*, 349 U.S. 133 (1955) and which we respectfully understand applies to these facts, manifests itself against the judge who determines probable cause being the one to judge. The state of law in Puerto Rico also so consecrates it; it does not allow the judge that determines probable cause to be the one to see the preliminary hearing, and none of these two judges can judge and finally adjudicate.

In the mental exercise of adjudicating not only does judicial knowledge that the person has intervenes, but also the knowledge that takes root in the conscience and participates in the mental process to adjudicate, which are inseparable one from the other.

The Puerto Rico Supreme Court has exonerated one of the complainers of parties, and has determined cause against the remaining ones, had the effect of passing judgment over the totality of the case with its evidence, and passed judgment on the credibility that the evidence deserved. Therefore, it put the herein appearing party in a different position and at a disadvantage in all the processes which are held before that court.

It would have been wiser and fairer that the Puerto Rico Supreme Court would have designated one of its Judges to have received the evidence and determined what was appropriate according to his criteria and the law; then, that way the full Court, with the exception of said Judge, could have seen the disbarment case for its final adjudication as Rule 13(e) of the Rules of the Puerto Rico Supreme Court provides.

By not doing so, we understand that the due process of law, and we are sorry to say it, has been breached by the Puerto Rico Supreme Court. From where there was the probable cause for the filing of charges of disbarment. From that time, it is our understanding that it had already been judged. There was little or no probability that the herein appearing party could have prevailed in his allegations since the Court was already predisposed against him in determining cause.

On March 21, 1991 counselor Felipe Benicio Sanchez, on behalf of Pedro Colton Fontan, one of the prosecutors that was charged with disciplinary action by the Special Independent Prosecutor, filed a motion before the Supreme Court of Puerto Rico requesting the Reconsideration of the Judgment that had been entered. In its, motion brother counsel Sanchez said:

"Also we have to question the fact that in this case the law clerk of the Honorable Judge Federico Hernández Denton, Attorney María Teresa Szendry Ramos is the daughter of the Special Prosecutor's delegated attorney, María Carmen Ramos de Szendry, who carried the burden of evidence against the herein appearing disbarred counsel. We understand that the Honorable Judge Hernández Denton should have disqualified himself in this process, something we request. This fact was unknown by us, and we were made aware of it through the Bar Association recently; if not, we would have alleged it from the beginning.

It is known that since the law clerks of the Judges of the Supreme Court do not appear anywhere in the published opinions, practicing lawyers do not know who they are."

This motion was denied by the Puerto Rico Supreme Court.

Of the seven judges sitting in Puerto Rico Supreme Court, all but Judge Rebollo López were appointed by Governor Rafael Hernández Colón, elected by the Popular Democratic Party. Judge Rebollo López did not intervene, and Judge Miriam Naveira de Rodón and Judge José A. Andreu García disqualified themselves from intervening in this disbarment procedure. This left four judges: Mr. Victor M. Pons, Chief Judge; Mr. Antonio S. Negron; Mr. Federico Hernández Denton, and Mr. Rafael Alonso Alonso. Of this four Supreme Court Judges, two of them were active in Governor Rafael Hernández Colón's political campaign. Judge Hernández Denton, was his political campaign Chairman during the 1980 elections, and Chief Judge Victor Pons, was his political campaign chairman during the 1972 elections. Judge Rafael Alonso was appointed by Governor Hernández Colón on March 6, 1986, that is, after Law 1 came into effect. These four (4) judges were the ones that entered

the opinion of disbarment against petitioner, who is a member of the New Progressive Party.

Due Process

Through the Resolution on June 5, 1984 (Appendix D on page 160), the Supreme Court of Puerto Rico established the procedure to investigate the complaint that was filed against petitioner, and others by the President of the Senate of Puerto Rico. Because of Law No. 1 of January 18, 1985, the procedure was changed. It is clear to us that the President of the Senate did not like the procedure established by the Puerto Rico Supreme Court.

The procedure established by the Puerto Rico Supreme Court provided to designate a panel of five (5) Special Examiners, whose task would be the evaluation, formulation and support of formal charges, for improper professional conduct that may be deemed necessary in each case, if any. Furthermore, it provided that should cause be determined after the proceeding provided in the aforementioned resolution, the Panel of Special Examiners should sustain the complaint before three Special Commissioners to be designated by said Supreme Court in due time, who would act *en banc*; and they would be guided by the proceeding set out in Rule Number 13 of its Regulation, and proceeded to name the panel of examiners. Rule 13 reads in part:

"After receiving the answer or the Reports mentioned in the foregoing paragraph, the Court may order the dismissal of the complaint, or submit the matter to one of its judges for determination of cause, who will inform his criterion and recommendation to the Full. . . ."

Notwithstanding that the Supreme Court of Puerto Rico, having designated a Panel of Special Examiners, and having established the procedure for investigating the complaint, including the designation of three Commissioners to act *en banc* in the eventuality that probable cause be determined, the Honorable Legislature of Puerto

Rico approved Law Number 1 of January 18, 1985, which created the Office of Independent Special Prosecutor. (Appendix E on page 177).

The Honorable Supreme Court of Puerto Rico, in its Resolution of October 7, 1986, among other matters, provided that: following the procedure set out in the original Resolution of June 5, 1984, granted a term to those attorneys to answer the reports; and once the matter was submitted, ordered the Special Independent Prosecutor, to file complaints against the appearing party, Angel Figueroa Vivas, and others.

The Honorable Supreme Court of Puerto Rico, through Resolution of December 15, 1986, provided, among other things, that in view of the answer to the complaint filed against the appearing party, Angel Figueroa Vivas and others, named Hon. Abner Limardo as Special Commissioner Superior Court Judge, so that in the presence of the parties he would hear and receive the evidence which these might present. Appendix J on page 200.

The appearing party alleged, before the Puerto Rico Supreme Court, that Law Number 1 of January 18, 1985, violates the constitutional principle of separation of powers, because the Puerto Rico Supreme Court had provided a procedure where it named five (5) Special Examiners; and likewise provided that the complaint, should probable cause be determined, be seen before three Commissioners who would act *en banc*. The aforementioned law had the effect of depriving him of the procedure provided for by the Supreme Court of Puerto Rico in its Resolution of June 5, 1984, and the change subsequent to the approval of the law, resulted an onus and prejudicial to the appearing party. We consider that this is so, since it is not the same that five (5) Special Examiners submit a report to determine probable cause, than the report be submitted by one special prosecutor. Likewise, it was more of an onus to the appearing party that the evidence presented, instead of being before three

Commissioners, acting *en banc*, would be presented before just one Commissioner. Appendix M on page 253.

By the Senate of Puerto Rico filing the complaint on May 30, 1984, and in the Supreme Court of Puerto Rico providing the procedure, through Resolution of June 5, 1984, when Senate Bill 13 was presented, and subsequently said bill being approved by the Legislature and converted into law on January 18, 1985, with the signature of the Honorable Governor of Puerto Rico, all knew that the Honorable Supreme Court of Puerto Rico had approved a procedure to air the complaint and charges. The only reason for this new law is obvious. The President of the Senate did not like the procedure that was established.

The appearing party understands, with the utmost respect, that Article 6 of the aforementioned law which provided, among other things, that the Special Independent Prosecutor would have exclusive jurisdiction to process those penal, civil, administrative and professional conduct actions which he deemed appropriate within the task that is entrusted to him here, including all the penal, civil, administrative and of professional conduct actions, whose investigation and processing may have begun before the law went into effect is unconstitutional. See also, the Exposition of Motives of the referred Law No. 1 of January 18, 1985, adversely affected him. Furthermore, he understands, very respectfully, that his allegation of violation of due process of law has a basis, due to the fact that in the application of Law No. 1 of January 18, 1985, it violates the principle of separation of powers; and further, that it is an *ex post facto* law.

Due Process of Law, as guaranteed by the Fifth Amendment to the Constitution of the United States, is that a law shall not be unreasonable, arbitrary or capricious. *Minsk v. U.S.*, C.C.A. 1942, 131 F. 2d 614, affirmed 63 S. Ct. 141, 319 U.S. 463.

There was no rational justification for the approval of Law Number 1 of January 18, 1985, other than that the

President of the Senate, in his persecution against petitioner, solely for political purpose, used and abused the power vested on him by the people. He simply did not like the rules established by the Puerto Rico Supreme Court, and decided that he had the power to establish new ones.

Invidious discrimination. . . . is barred by the Fifth Amendment. *Lung v. O'Checkley*, D.C.N. M. 1973, 358 F.Supp. 928, affirmed 94 S. Ct. 159, 414 U.S. 802.

Undue Procedure Exerted by the Special Investigation Prosecutor

The exposition of motives of Law Number 1 of January 18, 1985, evidences the purely political focus of the investigation of the Cerro Maravilla events. (Appendix E on page 166).

The process to which the herein appearing party, Angel Figueroa Vivas has been submitted by the State is one of such nature; it is oppressive and unreasonable, and it is affecting his honor, his reputation, and that of his entire family. It is a process which has been prolonged for such an extensive period of time, more than twelve (12) years, that it constitutes an anxiety for the respondent and his family, and an inhuman punishment.

The Special Independent Prosecutor, initiated a campaign in the newspapers of general circulation of Puerto Rico, where it threatened that it was going to file charges against Angel Figueroa Vivas, the Petitioner. This occurred during 1985, December of 1986 and January of 1987.

Around the middle of December, the Special Independent Prosecutor informed petitioner Angel Figueroa Vivas, that he was going to file criminal charges before the year was out, in our opinion, with the purpose of creating an unfavorable and adverse environment before public opinion and before the Commissioner.

When the present case was before the consideration of the Supreme Court of Puerto Rico, for the determination or not of probable cause, a public campaign began announcing that there were crimes which were going to be time-barred, and as an unheard of matter, the Special Independent Prosecutor filed a "Proposal of Charges" before there was a determination of probable cause against the herein appearing party Angel Figueroa Vivas.

Finally, when the present case was before the consideration of the Supreme Court of Puerto Rico, on June 10, 1988, five months before the general elections, the Special Independent Prosecutor filed criminal charges against Angel Figueroa Vivas. Once the criminal charges were filed and these have no precedent in our system of justice, the President of the Senate filed a motion before the judge that presided over the criminal trial, presenting evidence against petitioner. These charges were dismissed after the general elections, in 1989.

Fair Play by the Special Independent Prosecutor

The Special Independent Prosecutor was requested to provide previous statements made by petitioner Angel Figueroa Vivas, and the same were not submitted, allegedly due to having misplaced them. (Appendix K on page 210).

The statements requested made by Angel Figueroa Vivas, on June 21, 1983, June 22, 1983 and May 4, 1984, before the Judiciary Committee of the Senate of Puerto Rico, and another made before Atty. Agustin Mangual on December 12, 1983 were not submitted by the Special Independent Prosecutor during the disbarment procedures in 1987. These were delivered to petitioner a year later.

The Special Independent Prosecutor was requested to provide the statements made by Carmen Aledo and Teresita Garcia, on September 8, 1981, before the investigator of the Judiciary Committee of the Senate of Puerto Rico, and the Special Independent Prosecutor refused to

deliver those statements to the Petitioner Angel Figueroa Vivas.

Carmen Aledo and Teresita Garcia were the Secretaries of the Special Investigation Bureau of the Justice Department during the investigation of the Cerro Maravilla events.

The Petitioner Angel Figueroa Vivas requested that the Special Independent Prosecutor provide him with the sworn statements of the witnesses announced by them. They provided the statement of Miguel Marte Ruiz, on July 5, 1985, amended on November 12, 1985 before them, with 23 pages in blank. The Special Independent Prosecutor never submitted the contents of those 23 pages to the Petitioner Angel Figueroa Vivas. Appendix K, page 205.

Also, the Special Independent Prosecutor provided the sworn statement of José A. Romo, of January 21, 1984 with some pages in blank.

The appearing party requested the report concerning the expert study carried out on the typewriter which was used to prepare the sworn statement taken of Mr. Jesús Quiñones, on August 26, 1978, and the same was denied.

Cruel and Unusual Punishment

The Petitioner Angel Figueroa Vivas, during this long process which has been extended for more than twelve (12) years, has had to appear in different forums to set out his position in relation to his intervention in the case of Cerro Maravilla. The last was on March 12, 1991 before the Judiciary Committee of the Senate of Puerto Rico. Because the herein appearing party was the person to initiate the investigation concerning corruption in the Puerto Rico Police and to coordinate it with the Federal Agencies, he has been the object of persecution by the persons who were under investigation.

The herein appearing party honestly deems that he has been the victim of a political focus, which the investigation of the Cerro Maravilla case has given him. The aforementioned investigation has been prolonged for

long years, and the same has caused the appearing party and his family great anguish, sleepless nights, restlessness, fear; and he has even been submitted to unjustified public scorn, all of this constituting a cruel and unusual punishment.

Also the petitioner understands that the punishment established by the Puerto Rico Supreme Court, taking away his right to practice law, constitutes an unusual and cruel punishment to him and his family.

Self-Incrimination

The Supreme Court of Puerto Rico took the Petitioner Angel Figueroa Vivas' silence into consideration. He did not testify at the hearing before the Commissioner.

The petitioner did not testify in the hearing before the Commissioner designated by the Supreme Court of Puerto Rico because the Special Independent Prosecutor threatened to file criminal charges against him. The Supreme Court of Puerto Rico, in his opinion, Appendix A, page 134 said:

"None of the respondents testified at the hearings before the Special Commissioner Judge Limardo. They opted for only presenting in their favor certain documentary evidence and the testimony of several witnesses, mostly to establish their good reputation. For this reason -without being under oath nor being subject to cross-examination, we cannot in this stage consider as "proof" any of the justifying expressions of a conduct which by way of written testimony are made directly and which were not presented before the Special Commissioner Judge Limardo. We take these expressions as part of their arguments and not as evidence."

The Conclusion Reached by the Supreme Court of Puerto Rico, A Matter of Credibility Unjustly Adjudicated.

The Puerto Rico Supreme Court concluded in respect to petitioner the following:

In regard to *Figueroa Vivas*, it is obvious that on August 17, 1978, he coerced policeman Quiñones Quiñones

and exercised over him undue pressure for him to alter his statement concerning the volleys of shots, a fact that was incompatible with the version of self-defense of the police. Without explanation, he destroyed part of the initial sworn statement which this witness gave on that date.

Further, as combined conduct, *Colton Fontán* and *Figueroa Vivas* in the discharge of their prosecutorial investigations, on August 17, 1978 offered witness Quiñones Quiñones a job. On July 26, 1978, without prior notice, they showed up at his house in Ponce, and they threatened with formally charging him with several crimes if he did not alter his statement. (Appendix A on page 148).

In the complaint filed by the Special Independent Prosecutor against various attorneys, seven charges were against petitioner Angel Figueroa Vivas. (Appendix O on page 286). They can be summarized as follows:

1. Undue pressure and pretending that witness Jesús Quiñones altered a statement on August 17, 1978.
2. Destruction of a sworn statement which witness Jesús Quiñones offered on August 17, 1978.
3. That on August 3, 1978 with attorney Pedro Colton, they suggested to witness Miguel Marte what to testify.
4. That on August 17, 1978 with attorney Pedro Colton, he offered employment to witness Jesús Quiñones and use of undue pressure and pretending that witness Jesús Quiñones altered a statement.
5. Threatened witness Jesús Quiñones with formulating charges with the purpose that he alter his testimony, on August 26, 1978 with attorney Pedro Colton.
6. That with attorney Pedro Colton, he carried out an investigation plagued with very important omissions and deficiencies.
7. That with attorney Pedro Colton he did not take a sworn statement to witness Modesto Delgado to perpetuate his testimony, nor did they give importance to the information provided by this witness.

These charges were properly answered by petitioner. (Appendix N on page 258).

As we will see at the end, what the Puerto Rico Supreme Court did was adjudicate the complaint against petitioner only on credibilities which we believe were highly improper taking into consideration the political motivation behind the filing of the complaint and the active participation in the political campaign of the Popular Democratic Party of two of the four judges that adjudicated the complaint.

As to the first charge that the Puerto Rico Supreme Court concludes that occurred (Appendix O on page 286), the opinion entered on February 21, 1991 (on page 59 Appendix A), reads as follows:

"The tone and environment of the interrogatory then began to vary and Atty. Figueroa Vivas upset with gestures of disgust on his face and the elevation of the tone of his voice. . . . Atty. Figueroa in an upset tone expressed to Quiñones 'Do what you please, that's your business' at the same time that he threw the papers."

In his answer to the complaint petitioner states (Appendix N on page 266):

"Former policeman Jesús Quiñones was treated with the greatest respect and consideration on August 17, 1978 at the Office of the Special Investigation Bureau in San Juan. The charges that Atty. Angel Figueroa Vivas may have mistreated Mr. Quiñones on August 17, 1978 at the Office of the Special Investigation Bureau in San Juan, does not withstand analysis, when subsequently it is Mr. Quiñones who invites Atty. Angel Figueroa Vivas to take his statement in his own home, not at the police station, on August 26, 1978.

So this complaint was reduced only to the allegation of Mr. Quiñones that he was mistreated by petitioner and the allegation by petitioner that this was not so. But the

Puerto Rico Supreme Court also had before them the report made by Prosecutor Osvaldo Villanueva, on January 19, 1980.

Prosecutor Osvaldo Villanueva, in his report of January 19, 1980 concerning the Maravilla case on page 75, points out the following:

"In our opinion Mr. Quiñones in testifying before us on November 21st the parts previously transcribed lied deliberately. The statement taken by Prosecutor Figueroa Vivas on August 26, 1978, was at the witness's own home. We cannot believe that this man felt in the environment of his own home pressured to lie as he pretends that he now be believed." Furthermore Prosecutor Villanueva, on page 79 of his report, states that:

"For said reason we must discard as not being worthy of any credit the statement of former Policeman Jesús Quiñones Quiñones."

Prosecutor Villanueva's conclusion was totally disregarded by the Puerto Rico Supreme Court.

The second charge was to the effect that petitioner destroyed a sworn statement offered by Jesús Quiñones on August 17, 1978. The Puerto Rico Supreme Court concludes that this in effect occurred. In its opinion (Appendix A on page 61), the Puerto Rico Supreme Court said:

Up to the moment the sworn statement which Jesús Quiñones was giving on August 17, was interrupted, Carmen Aledo had transcribed on the typewriter ("two or three") pages of said statement which was being given under oath by Quiñones. She made delivery of same to Atty. Figueroa that day. Atty. Figueroa destroyed it in spite of knowing that it contained what had been stated under oath up to that moment by Mr. Quiñones.

In his answer to this complaint, petitioner Angel Figueroa Vivas said (Appendix N at page 273):

At no time did Atty. Figueroa Vivas considered that the pages that had been typed had any value whatsoever, inasmuch as said witness, due to the alleged illness, had

not had the opportunity of reading them, making the corrections which he deemed appropriate, or putting his initials on the pages and lastly signing them.

The respondent understands that as of the date in which the witness Jesús Quiñones appeared at the Special Investigation Bureau, to give a statement, the accepted practice in the Bureau was that statements of witnesses be perpetuated in stenographic symbols or directly on the typewriter as in the present case. If the statement of the witness was taken directly on the typewriter, once finished, it was handed to the witness for him to read it. The witness proceeded to read it, make the observations which he deemed pertinent and the corresponding corrections; and if he was in agreement, he proceeded to write his initials on the margins of each sheet of the pages, signing the last page, so as to comply with the statutory provisions, and give life to the statement as a public document as provided in 32 L.P.R.A. sec. 2045, repealed 1979.

"Manner of taking depositions

The depositions should be taken in the form of questions and answers. The words of the witness should be written in his presence, by the officer who takes the deposition, or by any person not a party to the matter, named by him. It may be taken stenographically, and, in this case, an ordinary writing should be prepared by the stenographer who took it. Upon finishing it, it will be read to the witness or by him, who will correct it in any detail, if he so desires, he himself writing his corrections, or causing that they be written at the foot of the deposition; once done he will sign it." Once the formalities established by existing law are complied with the document, it becomes a public document as established by 31 L.P.R.A. sec. 3271.

"Public documents are those authorized by a notary or qualified public employee, with the solemnities required by law." Furthermore, it is provided in 4 L.P.R.A. sec 883 that the sworn statements shall be written and signed.

"The sworn statements according to 881 to 885 of this title, will be made in writing and will be signed by the person who made them."

Atty. Figueroa Vivas understood that the pages which had been taken on August 17, 1978 from former Police-man Jesús Quiñones Quiñones, had no value whatsoever. Therefore, he proceeded to take his statement on August 26, 1978, at his home in Ponce; since due to the alleged illness of the witness, the same had not concluded. The pages had not been read and no corrections of any kind had been made nor had he written his initials, and much less had he signed it as required by law, wherefore they were not, nor could these pages be considered a public document or documentary evidence.

The Puerto Rico Supreme Court gave no value to petitioner's position despite it was based on the law and the accepted practice in the Bureau. This we cannot understand, and we fail to see the violation to the Ethics Rules under these circumstances. It is clear that the two or three pages were not a sworn statement and were not a public document, and what petitioner did was exactly what was the accepted practice at that time at the Bureau of Special Investigation. With its conclusion, the Puerto Rico Supreme Court approved a new procedure for statements taken to witness by a prosecutor and applied it retroactively to petitioner.

Charged number three as to that petitioner incurred on improper conduct when questioning witness Miguel Marte was dismiss by the Supreme Court. Appendix A on page 71.

"On the other hand, the doubt finally expressed by Marte himself, *does not allow us to conclude that Atty. Figueroa was the other prosecutor who accompanied Atty. Colton in that endeavor.*" This charge was denied by petitioner, and he presented evidence to contradict the same; but by the phraseology used by the Puerto Rico Supreme Court, it was quite possible that had not witness Marte expressed doubt about petitioner's participation, the Puerto Rico Supreme

Court would have disregarded petitioner's position and concluded that he was guilty as charged.

The fourth charge is a repetition of charge one with the addition that petitioner offered witness Quiñones a job. The Puerto Rico Supreme Court concludes that this occurred.

Petitioner Figueroa said in his answer to the complaint (Appendix N on page 278):

During the afternoon of August 17, 1978 an exhumation of the corpse of Arnaldo Dario Rosado was performed; reason for which Atty. Figueroa Vivas was not present during the morning and early afternoon hours.

That night he was present at the Institute of Legal Medicine, while the second autopsy was being performed on the deceased.

Atty. Angel Figueroa Vivas reiterates that he was not at any meeting on the morning of August 17, 1978, at the offices of Prosecutor Pedro Colton Fontán.

The Puerto Rico Supreme Court had before them a deposition taken to Mr. Quiñones in the Federal Court in which he mentioned the persons that were present during the morning of August 17, 1978 at the office of Atty. Pedro Colton, Mr. Quiñones said then:

" . . . I presented myself as Mr. Jesús Quiñones Quiñones and then they passed me to a group of persons that now I can say is Attorney Colton. There was Mr. Colton. There was a Mr. - if I remember correctly, Rodriguez Suárez. If I remember correctly Rodriguez Suárez.

There was another one with the last name of - golly, Romo. There was Agent Andrades there and there was a very obese person. I consider myself fat but he was much more obese than I am and I don't know the name of that person up to now." Appendix L, page 243.

The witness for the prosecution, Atty. José Romo Matienzo testified under oath that he saw for the first time, on August 17, 1978, Mr. Jesús Quiñones, in the afternoon at the offices of the Special Independent Prosecutor. Appendix L, page 244.

On page 128 of the transcript of his testimony, before the Honorable Commissioner, Mr. Romo testified the following:

"Q. Witness, When is it that you saw for the first time, on August 17, Mr. Jesús Quiñones?

A. That I have seen him, that I remember, that I have seen him.

Q. Visually. Yes, that you have perceived him with your sense of vision.

A. After lunch.

Q. After lunch. At what place?

A. At the Office of the S.I.B."

Yet, Mr. Jesús Quiñones affirmed that Mr. Romo was at the Office of Prosecutor Colton in the morning of August 17.

So we have a sworn statement before the Federal Court given by Mr. Quiñones in which he did not place petitioner Figueroa at the office of Atty. Pedro Colton in the morning of August 17, 1978. We also have Atty. Romo that testified that he saw for the first time Quiñones after lunch while Quiñones said that Romo was during that morning at Atty. Colton's office and we have petitioner saying that he was not present during the morning of August 17, 1978 at Atty. Colton's office. But the Supreme Court of Puerto Rico decided to believe the second declaration of Quiñones as to that petitioner was present that morning.

Charge five refers to the testimony taken by petitioner Figueroa to witness Quiñones at his house on August 26, 1978. That Atty. Pedro Colton along with petitioner threatened witness Quiñones with formulating charges with the purpose that he alter his testimony. In its opinion the Puerto Rico Supreme Court concluded that on August 26, 1978, without prior notice they (Attys. Colton and Figueroa) showed up at his house in Ponce and they threatened him with formally charging him with several crimes if he did not alter his statement. On page 62 of Appendix A the incident is narrated as follows:

"Upon arrival there, an argument arose between Atty. Colton and Quiñones. Upon Quiñones inviting them in, together with them at the entrance gate of the residence, Atty. Colton answered that he wouldn't enter if 'you're going to get like you got over there,' referring to the situation of discrepancy which arose on August 17 at the office of the Investigation and Criminal Processing Division of the SIB. He added, 'you're looking for me to give you an obstruction of justice or contempt charge.' Quiñones answered: 'You don't want to accept what I am saying.' Under these circumstances Quiñones felt bothered because he saw that in his own home a situation similar to what occurred in those offices on August 17 was occurring. Atty. Colton insisted in the argument expressing 'Look what it says here,' at the same time he pointed to some papers that he was carrying which he sustained expressed what Ortiz Molina had said when they were together at the Police tower on July 25, 1978. Quiñones indicated then that he would call his lawyer, which he tried to do without being able to locate him. Upon his return to the gate, his wife had already gone out of the room and was taking care of the persons."

In his answer to the complaint, petitioner said (Appendix N on page 279):

What has been stated by former Policeman Quiñones is totally false, when he alleges that Prosecutor Colton Fontán threatened him, in the presence of Atty. Angel Figueroa Vivas, so that he would alter his testimony in Ponce on August 26, 1978.

Former Policeman Jesús Quiñones was treated with the utmost respect and consideration on August 26, 1978.

This is shown by the cordial manner which Mr. Quiñones had for the prosecutors.

He invited them to come into his home, showed them the patio, and they sat down in the back part to speak while his parents arrived.

Once his parents arrived, he introduced them offering refreshments or coffee.

It is incredible that a former policeman, in his house, in the presence of his parents, wife and children, in a familiar environment, may feel so terrorized, pressured to lie, as it is pretended that he be believed.

Here again the charge is reduced to credibility, which the Puerto Rico Supreme Court adjudicates against petitioner. It is needless to say that witness Quiñones never said that he was threatened by petitioner Figueroa.

The Fifth charge is to the effect that petitioner with Atty. Colton carried out an investigation plagued with very important omissions and deficiencies.

At Appendix A, page 92 the Puerto Rico Supreme Court concluded:

The aforementioned report of Attys. Colton and Figueroa reveals omissions and aspects unclarified or not delved into the investigation of those events, which seen in their totality, represent the result of a serious deficiency in the investigation performed.

In his answer to the complaint, petitioner said: Appendix N, page 279.

The report concerning Cerro Maravilla dated August 29, 1978 adjusts to the truth according to the evidence compiled, sworn statements of the witnesses, analysis and studies, expert studies, and material evidence.

Atty. Angel Figueroa Vivas, as Director of the Bureau of Special Investigations, had the authority to make the corresponding study and determine the action which was appropriate according to the totality of the evidence compiled.

Because a second version arose subsequently, of how the facts occurred at Cerro Maravilla, on July 25, 1978, the investigators cannot be made responsible for same.

At all times, there was the utmost good faith of discovering the truth. At no time were the people of Puerto Rico mislead. What was found was reported, and our decision of ordering the dismissal, according to the evidence compiled, was the most correct and wise action at the moment.

Upon the second version arising, due to the fact that the case had not been submitted to the consideration of a Judge,

they were able to be submitted as murder cases for the first time.

It was easy to come to the conclusion that the Puerto Rico Supreme Court came after the second version arose. But the Puerto Rico Supreme Court knew and they failed to mention that on 1979 the F.B.I. and Federal Grand Jury came to the same conclusion as the one in the report signed by petitioner. Furthermore, that in 1980 a second F.B.I. and Federal Grand Jury investigation also came to the same conclusion.

The Puerto Rico Supreme Court (Appendix A, page 93) goes on to say:

The aforementioned report concluded the nonexistence of injuries compatible with severe trauma received by the dead youths without the performance of the *anatomopathologic* examination pointed out by Dr. José Ramos Rivera in his sworn statement given on August 10, 1978.

We failed to understand why the Puerto Rico Supreme Court does not mention in its opinion that the reason for this was that Dr. Ramón Rivera was a general medicine physician, and the investigators had the reports of two pathologists, Dr. Regal and Dr. Criado, who concluded that "through the entire surface of the body there is absence of all types of evidence of trauma such as hematomas, erosions, abrasions, ruptures, lacerations." (Appendix L on page 248).

The pathologist's report was known to the Puerto Rico Supreme Court, but they came to a different conclusion.

As to the last charged that with Atty. Colton they did not take sworn statement to witness Modesto Delgado nor did they give importance to the information provided by this witness.

The Puerto Rico Supreme Court concluded as follows: (Appendix A on page 149).

"They also did not give importance to the testimony of Delgado Garcia related with the impacts that appeared on the gate of Station WRIK-TV, in-spite of the fact that that information was highly relevant in the search for the truth, and further, they omitted to take his sworn statement in order to perpetuate his testimony."

In his answer to the complaint petitioner Figueroa said (Appendix N on page 286):

"Atty. Angel Figueroa Vivas, as Director of the Special Investigations Bureau assigned to Atty. William Rodriguez, as agent in charge of the investigation of the events of Cerro Maravilla, and his assistant in the technical aspect Atty. José A. Romo, so that they would assist the prosecutors in the investigative process.

During the first investigation of these events absolutely no one informed that there was any person with knowledge of the facts whose sworn statement had not been taken.

During this first investigation there were two witnesses one of them Mr. Miguel Marte Ruiz and policeman José Rios Polanco, who testified that there had been no shooting from inside.

The mentioned dents were taken into consideration, they were photographed and evaluated together with all the evidence.

The Respondent honestly alleges that the charge that there was a witness with knowledge of the original facts no statement taken from him is incorrect.

Instructions were given to the agent in charge, Atty. William Rodriguez, to locate any person who had knowledge of the facts to take a statement from him. Of the witnesses which he brought to the attention of Atty. Figueroa Vivas statements were taken from them.

Atty. William Rodriguez, in his sworn statement dated December 9, 1980 before Prosecutor Villanueva, testified the following:

"P. Tell me if you were able to observe marks of shots on the entrance gate to Rikavision?

W. Yes sir.

P. Do you know how they were produced?

W. No sir"

Appendix N, page 283.

If Atty. William Rodriguez, who was the agent in charge of the investigation, as of 1978, did not know how those

marks of shots on the pipes were produced nor does he mention the version of Mr. Modesto Delgado; much less so could Atty. Angel Figueroa Vivas who was the Director of the S.I.B. have known.

If at the time of the investigation petitioner had no knowledge of the existence of witness Delgado, why should he be held responsible for not perpetuating his testimony?

At the end of its opinion, the Puerto Rico Supreme Court goes on to say:

"In particular respondents, Colton Fontán and Figueroa Vivas, more than legitimate zeal shown here disproportio-nated animosity and impermissible persecution against some witnesses and participated in a concerted conspiratory action (Canons 5, 15 and 35). They ignored vital factors in regards to the reliability of testimony, and in that way they avoided reaching with reasonable certainty the gut of the truth."

In respect to petitioner, there is only one witness saying that he was under undue pressure by petitioner, that is witness Quiñones, and there is sufficient evidence to question the veracity of his testimony. And as we said before it is easy to come now to the conclusion reached by the Puerto Rico Supreme Court as to the truth of what happened at Cerro Maravilla, after the policemen that were involved came forward and changed their original version of the facts, so that the real truth was known. But at the time of the investigation conducted in part by petitioner Figueroa, as well as the next two investigations conducted by the Federal Bureau of Investigation and taken to a Federal Grand Jury, those facts as they really happened were not known, and the preponderance of the evidence compelled, the sworn state-ments of the witness, the analysis and studies of the material evidence as the opinion of the expert witness lead to the opinion entered in the report.

In discussing the charges filed against petitioner, we do not want to give the impression that this appeal is based solely on a credibility issue, that is not the case.

The Writ of Certiorari is based on the profound conviction of petitioner that his rights to due process were violated

when the Puerto Rico Supreme Court went along with the President of the Senate and agreed to change the whole procedure of disbarment that was already established by the Puerto Rico Supreme Court.

What real motives could the President of the Senate have to provoke the change in the Procedure of disbarment other than to guarantee that the complaint filed by himself was to prevail. Due Process prohibits congress from enactments which shock sense of fair play (*Radio Position Finding Corp. v. Bedix Corp., supra.*).

Justice must satisfy the appearance of justice – *Offutt v. U.S., supra.* There should be no doubt that the filing of the complaint was highly politically motivated and is a fact that the Cerro Maravilla was the main issue in the Popular Democratic Party campaign. Doesn't the appearance of justice call for the two Supreme Court Judges, that were (prior to becoming judges of the Puerto Rico Supreme Court), campaign director for the Popular Democratic candidate, to excuse themselves from intervening in this procedure.

If Honorable Judge Hernández Denton knew that his law clerk was the daughter of the delegate special prosecutor that was filing the different motions in this case, shouldn't he in the name of the appearance of justice excuse himself from intervening in this case?

If a fair trial in a fair tribunal is a basic requirement of due process, *In re Murchison, supra*, was it fair that the court *en banc* ordered the filing of the different charges against petitioner equivalent to a determination of probable cause, after weighing the evidence presented and later once the charges are presented, the same judges go on to adjudicate the same charges.

What was wrong with the procedure first established by the Puerto Rico Supreme Court? It had five special examiners that were substituted by one special prosecutor created by Law 1. The determination of probable cause was to be established by one judge of the Supreme Court and this was changed for the court *en banc*. It had three Special Commissioners acting *en banc* and this was changed by one commissioner. It is obvious that the first procedure had more

guarantees and petitioner had a better opportunity of presenting his case. As it is advised to the accused person that wants to waive his right for a jury trial, it is easier for the prosecutor to convince one judge than to convince twelve jurors.

In the resolution that created the first procedure, the Supreme Court said "conscious of its duty of protecting and promoting the independence of the judicial power as a factor of equilibrium in the governmental structure of our system of democratic life." If this was true why then change the procedure?

How Independent is the Special Independent Prosecutor

When Law 1 was presented on its statement of motive it read: (Appendix E, page 167).

"The serious irregularities uncovered by the Senate in the previous criminal investigation, emphasize the need to avoid even the slightest shading of conflicts of interest between the investigator and those investigated and to separate said process from the passions of partisan-politics."

The President of the Senate appointed Atty. Héctor Rivera Cruz as Senate Investigator of the Cerro Maravilla incident. When the Popular Democratic Party won the 1984 election Governor Rafael Hernández Colón appointed Atty. Héctor Rivera Cruz as Secretary of Justice.

Law 1 provides for the compensation of the Special Independent Prosecutor as follows:

Section 12.- Compensation

The Special Independent Prosecutor's compensation may be established by means of a salary or a service contract. The compensation formula shall be mutually agreed upon by the Special Independent Prosecutor and the *Secretary of Justice*.

Law 1 and Partisan-Politics

When Law 1 reads on its statement of motives that it is needed to separate said process from the passions of partisan-politics, is it referring to the process initiated by the Puerto Rico Supreme Court against petitioner because of the complaint filed by the President of the Senate, or is it referring to the political campaign around the Cerro Maravilla incident.

Reading the background of the Special Independent Prosecutor Bill, is sufficient to notice how politically motivated the same was.

Law 1 is undoubtedly an *ex post facto* law, but more than that, it is a law enacted for pure political purpose. This violates petitioner's constitutional rights as guaranteed by the Fourteenth Amendment.

CONCLUSION

The via crucis that petitioner has passed since the day the President of the Senate presented the complaint against him until the day he was disbarred, has been politically motivated. His only hope for justice is the United States Supreme Court that, thanks to our citizenship, has jurisdiction over the Supreme Court of Puerto Rico. For justice we pray.

Respectfully submitted,

In Aguadilla, Puerto Rico, this 30 day of August, 1991.

ISRAEL ROLDAN GONZALEZ
USDC-PR 115602
Attorney for Petitioner
44 Progreso Street
Aguadilla, P.R. 00603
Tel. (809) 891-1359

TABLE OF CONTENTS

	Page
APPENDIX A OPINION AND JUDGMENT OF THE PUERTO RICO SUPREME COURT, DATED FEBRUARY 21, 1991.....	App. 1
APPENDIX B ORDER OF THIS HONORABLE COURT GRANTING EXTENSION OF TIME TO FILE WRIT OF CER- TIORARI.....	App. 157
APPENDIX C LETTER OF WILLIAM FRENCH SMITH, UNITED STATES ATTOR- NEY GENERAL, DATED SEPTEM- BER 2, 1982.....	App. 158
APPENDIX D RESOLUTION ISSUED BY THE SUPREME COURT OF PUERTO RICO DATED JUNE 5, 1984... App. 160	
APPENDIX E LAW NUMBER 1 OF JANUARY 18, 1985.....	App. 165
APPENDIX F RESOLUTION ISSUED BY THE SUPREME COURT OF PUERTO RICO, DATED MARCH 14, 1985..... App. 186	
APPENDIX G INFORMATIVE MOTION, DATED AUGUST 7, 1985.....	App. 189
APPENDIX H MOTION FILED BY ATTY. MARICAR- MEN RAMOS DE SZENDRY, DELE- GATED DISTRICT ATTORNEY, DATED AUGUST 19, 1986..... App. 194	
APPENDIX I RESOLUTION ISSUED BY THE SUPREME COURT OF PUERTO RICO, DATED OCTOBER 7, 1986..... App. 197	

TABLE OF CONTENTS - Continued

	Page
APPENDIX J RESOLUTION ISSUED BY THE SUPREME COURT OF PUERTO RICO, DATED DECEMBER 15, 1986.... App. 200	
APPENDIX K REPLY TO THE DOCUMENT OF THE SPECIAL INDEPENDENT PROSECUTOR TITLED "COMMENTS AND RECOMMENDATIONS CONCERNING THE CONCLUSIONS OF FACT", FILED BY ATTORNEY JESUS L. MALDONADO, DATED OCTOBER 27, 1987..... App. 202	
APPENDIX L MOTION FOR RECONSIDERATION FILED BY ATTY. JESUS LUIS MALDONADO, DATED MARCH 6, 1991.....App. 229	
APPENDIX M MOTION CONCERNING CONSTITUTIONAL QUESTIONS FILED BY ATTY. JESUS L. MALDONADO, DATED JULY 23, 1987..... App. 253	
APPENDIX N ANSWER TO THE COMPLAINT IN CASE NUMBER CE-86-666 IN THE SUPREME COURT OF PUERTO RICO, DATED NOVEMBER 24, 1986... App. 258	
APPENDIX O PAGES 1, 3, 4, 5, 6 AND 19 OF THE COMPLAINT CONCERNING PROFESSIONAL CONDUCT IN CASE NO. MC-84-25 AND MC-85-28 IN THE SUPREME COURT OF PUERTO RICO, DATED OCTOBER 10, 1986.... App. 286	

APPENDIX A
IN THE SUPREME COURT OF PUERTO RICO

IN RE)	(
PEDRO COLTON FONTÁN)	(
OSVALDO VILLANUEVA	)	CE-86-666 (
DÍAZ)	(
AURELIO MIRÓ CARRIÓN	)	( PROFESSIONAL
ANGEL FIGUEROA VIVAS	)	( CONDUCT
JUAN E. BRUNET)	(
JUSTINIANO)	(

OPINION OF THE COURT ENTERED BY
ASSOCIATE JUSTICE MR. NEGRÓN GARCÍA

San Juan, Puerto Rico, February 21, 1991.

I

Ethical Conceptual Framework:-

This is a *unique* case in the scope of our disciplinary jurisdiction. Not only because it pierces the veil in regards to the anti-ethical conduct of lawyers, in their prosecutorial function, but also because it highlights how the strength or weakness of governmental institutions in a democracy has strict correlation to the integrity or frailty of each one of its officials. Above all, it depends on what the great teacher, Hostos, called "the organ of law: the *conscience*." Eugenio M. De Hostos, *Social Morality*, Ed. Vosgos, S.A., Barcelona (1974), p. 123. Ultimately, more than the events, we are before the great human tragedy of Cerro Maravilla.

A succinct reflection is required in regards to the pertinent ethical conceptual framework. The discharge of

App. 2

the social function of the members of the judicial profession is inexorably related to the Puerto Rican democratic system, "basic for the life of the community and where the faith of justice is considered a determining factor in the social co-existence, [therefore] it is of utmost importance to institute and maintain a just and efficient judicial order, which enjoys the complete trust and support of the citizenry." *Preamble To the Code of Professional Ethics*.

The attainment of this end, implies "the duty to perform its high ministry with the greatest and highest competence, responsibility and integrity." *Id.* This mandate for a professional morality applies always to every "judge, prosecutor, practicing attorney, counsellor or in any other capacity." *Id.* It demands of the attorney a clear conscience of his function, as a jurist, who has to be guided by the respect to the inviolability of the dignity of the human being. It entails that he has contracted a solemn and unbreachable commitment which goes beyond his person, and implies "[to] ensure that the conduct of his professional colleagues is guided equally by said demands." *Id.*

"Consubstantially with . . . the position of prosecutor, and as a member of the legal profession [he is] committed to the discovery of the truth and to ensure that justice is done, . . . " *In Re Pacheco Nieves*, 104 D.P.R. 566, 567 (1976)-Concurring and Dissenting Vote-; *People v. Arreche Holdum*, 114 D.P.R. 99, 115 (1983).

The Prosecution is tied "to the problem of the fundamental liberties of the person before the State." Carlos A. Ayarragaray, *the Prosecution and Liberty*, Buenos Aires Bar Association Journal, T. XXXII, No. 3 (1954), p. 208. This

App. 3

mission of great prestige, although spiritually gratifying, is difficult and complex. Even though the Prosecutor has ample discretion, many times his work is not publicly understood. For this reason it has been said that the Prosecutor cannot do a good job without, sooner or later, provoking animosity or a suit by a citizen ("a citizen suit"). *Prosser & Keeton on Torts*, § 132 5th ed. (1984), p. 1065 (*translation ours*). This reality serves as an anchor for the *conditioned immunity* which covers the actions of the Prosecution Ministry in its investigation and presentation of criminal causes. Basically, there exists a public policy of allowing the prosecutors to exert their functions without fear of reprisals or financial consequences. *Romero Arroyo, etc. v. E.L.A. etc.*, resolved on January 24, 1991.

By way of reminder, in *Imbler v. Patchman*, 424 U.S. 409 (1976) the highest federal court reproduced the following statements:

"The office of the Prosecution Ministry should be administered courageously and with independence. How can you obtain this if the Prosecutor is subject to being sued by those whom he accused without obtaining a conviction? To permit it would open an abyss and create an unlimited embarrassing situation for the more proper officials by those who benefited from it. In each case there are, as possible consequences, the failure to convict. If the Prosecutor deems appropriate to request the filing and dismissal of the case . . . he will always have the doubt of a possible civil suit. The apprehension of these consequences would promote a lot of insecurity and would weaken the policy of impartiality, without fears, which should characterize this Office. The work of the Prosecutor

App. 4

would be hampered and would stray from the objective of a just, but rigorous enforcement of the laws." pp. 422-434 (*translation ours*)

We clarify, notwithstanding, that this *conditioned immunity* does not cover "fraudulent, malicious or criminal actions in which the prosecutors might indulge, and the Secretary of Justice, in the [investigation], filing and processing of criminal causes." *Romero Arroyo, etc. v. E.L.A., etc. supra.*

To the prosecutors "the ethical principles which regulate the legal profession unquestionably apply, with the acceptable modifications and cognizant results of the inherent peculiarities which this complex public endeavor entails." *Complaint against the Secretary of Justice*, resolved on June 7, 1990; *In re Calderon Marrero*, resolved on November 2, 1988; *In re Secretary of Justice*, 118 D.P.R. 827, 849 (1987). Since between the lawyer and the prosecutor, the "differences in functions should never obscure the basic truth that although their roles are different, each one is bound by the same code and a tradition of good conduct." *Standards Relating to the Prosecutions & the Defense Function*, ABA; March 1971, p. 1.¹

We will point out that although the prosecutor "in the investigation of alleged criminal acts, ordinarily relies on the police and other investigative agencies, he has the

¹ Without much elaboration American case law has extended to the prosecutors the Code of Ethics of the American Bar Association (ABA). See, *In re Wilson*, 258 P.2d 433 (1953); *In re Friedman*, 392 N.E.2d 133 (1979); *In re Burrows*, 629 P.2d 820 (1981).

App. 5

responsibility of affirmatively investigating these suspicious illegal activities, when they have not been adequately taken care of by the other agencies. *Standard*, ABA, 3.1 (a) (*translation ours*). Also it should be pointed out that it constitutes "improper professional conduct, the utilization by a prosecutor of illegal means to obtain evidence or employing, instructing or stimulating its use by third parties." *Id.* 3.1 (b) (*translation ours*).

In summary the prosecutor, like every lawyer, has to be moved by the discovery of the truth and of the procurement that justice be made. The requisites of honesty and probity, like those of competence, judicial skills and diligence, have been demanded at all times. Those attributes are manifested from the investigation stage and they extend up to the processing of causes before the courts.²

² Literature which speaks about the important function of the Public Ministry is abundant. We note that same concentrates mostly in commenting and analyzing the improper conduct of this official in judicial cases. Among the most outstanding, consult, Joseph F. Lawless, Jr., *Prosecutorial Misconduct*, Kluwer, Law Book Pub., Inc. (1985); Barbara A. Schwartz, *The Limits of Prosecutorial Vindictiveness*, Iowa L.R., Vol. 69, pp. 127-208 (1983); Carl F. Pinkele & William C. Louthan, *Discretion, Justice & Democracy*, Iowa State U. Press, (1985); Leon Friedman, *Discretion and Public Prosecution*, compiled in *The Invisible Justice System, Discretion & The Law*, ed. B. Atkins & M. Pogrebin, 2d Ed. (1982); pp. 69-73; James A. Trowbridge, *Restraining the Prosecutor: Restrictions on Threatening Prosecutor for Civil Ends*, Maine L.R., Vol. 37:1 (1985) pp. 41-62; R. Feinberg, *The Second Circuit Reacts to Prosecutorial Misconduct*, Brooklyn L.R., Vol. 49:4 (1983);, pp. 1245-1264; Uviller, *The Virtuous [sic] Prosecutor in Quest of an Ethical Standard: Guidance from the ABA*, 71 Mich. L. Rev., 1145 (1973).

App. 6

Nevertheless, we recognize that there does not exist "perfect investigations" and that the discharge of that duty by the Prosecution is one that is not exempt from human error. *Certainly, those errors incurred in good faith (bona fide) without the intervention of negligence or gross professional incompetence, are not susceptible in the ethical sphere of generating disciplinary sanctions.* Even so, the intervention by the Prosecuting Ministry in the phase of an investigation cannot be underestimated. It can be affirmed that that is the most important stage in a criminal process, since it will serve as a basis for all that may occur subsequently. "A deficiently performed investigation may give rise to the fact that injustices of sending an innocent man to jail can be committed or avoiding that the perpetrator of some delinquent acts may be properly incarcerated." *Report of the Commission for the Study of the Prosecution and the Legal Representation of the State*, September 26, 1974, Council on Justice Reform in Puerto Rico, p. 114s. Above all, we cannot forget the reality that the "Prosecution in the discharge of its responsibility enters into continuous interaction with the police . . ." *Id*, p. 109.

Keeping these concepts in mind, let us set out the procedural background.

II

Procedural Background:-

On October 10, 1986, the Special Independent Prosecutor (SIP) Atty. Alejandro Salgado Rivera, presented before this forum a sworn complaint against attorneys Pedro Colton Fontán, Osvaldo Villanueva Díaz, Aurelio Miró Carrión, Angel Figueroa Vivas and Juan E. Brunet

App. 7

Justiniano. In synthesis, he accused them of numerous charges of alleged improper professional conduct while they performed their duties as prosecutors during the investigations related with the notorious events of Cerro Maravilla, wherein Arnaldo Darío Rosado and Carlos Soto Arriví died.³

After extensions of time for that purpose, the respondents answered separately. All denied the charges and set out different defenses and arguments in support of their respective positions.

On December 15, 1986 we designated Superior Court Judge, Hon. Abner Limardo, as Special Commissioner, with the task of receiving the evidence from the parties, in the presence of these; and in due time certifying and presenting his conclusions of fact before us.

The Special Commissioner, Judge Limardo, held the necessary hearings.⁴ The Special Independent Prosecutor,

³ Aside from this disciplinary process, up to the present, these facts have caused the following judicial controversies before this forum: *People v. Pérez Casillas and Moreno Morales*, decided on June 29, 1990; *People v. Pérez Casillas*, 117 D.P.R. 380 (1986); *People v. González Malavé*, 116 D.P.R. 578 (1985); *Romero Varceló v. Hernández Agosto*, 115 D.P.R. 368 (1984); *Peña Clós v. Cartagena Ortiz*, 114 D.P.R. 576 (1983); *Soto v. Sec. of Justice*, 112 D.P.R. 477 (1982).

⁴ They were held on the 10th, 11th, 12th, 17th, 18th, 19th, 23rd, 24th, 25th, and 26 of February and 2nd, 3rd, 4th, 5th, 9th, 10th, 11th, 12th, 16th, 17th, 20th, 24th, 25th, and 26th of March of 1987.

According to our authorization of December 23rd, they were held in Room 902 of the San Juan Judicial Center and were recorded with the administrative assistance from the personnel of that courtroom.

Atty. Salgado Rivera, and his delegates, Atty. Maricarmen Ramos de Szendrey, Atty. Manlio Arraiza, Atty. Norma Acosta and Atty. Efraín Meléndez participated. The respondent Colton Fontán was represented by Attys. Eugenio Ramos Ortíz, Elí B. Arroyo and Felipe Benicio Sánchez; Villanueva Díaz was represented by Atty. Wilfredo Figueroa Vélez and Luis A. Amorós; Miró Carrión by Attys. Wilfredo R. Picorelli Osorio, E.L. Belén Trujillo and Víctor Ramos Acevedo; Figueroa Vivas by Atty. Jesús Luis Maldonado; and Brunet Justiniano through Atty. Héctor Santiago Rivera.

After the presentation of the evidence and the presentation in writing of the argumentative exposition from the parties, on April 13, 1987, the case was finally submitted to the Special Commissioner.

With extreme diligence, on May 21, 1987, the Special Commissioner, Judge Limardo, formulated and submitted to us an elaborate and detailed written report of his conclusions of facts and attachments. He did so in a *closed and sealed* envelope, without notifying the parties, because he deemed in conscience that his conclusions could be related to evidence to be presented in a criminal case for murder initiated in the Superior Court, San Juan Part, against several police agents who allegedly intervened in the events at Cerro Maravilla. He stated that in said circumstances, the notice of his factual determinations, "with the divulgence which that would represent, could be interpreted as an interference on the part of this Commissioner with the rights of the parties and the authority of the court in the criminal case referred to . . . On the other hand, it is not desirable that we retain

the submission to the Supreme Court of the report containing said conclusions of fact until the aforementioned criminal case concludes, an alternative which we have contemplated as a measure to guarantee the rights of all the parties in the aforementioned criminal case and of respecting the authority of the case in same; specially when said process can have a long duration and this retention could also affect the rights of the respondents in the present proceeding." He submitted to us, then, "the decision of when to perform the notification of these to the consideration of same."

On June 30th we authorized the remission of the Report to the parties.⁵ After extensions of time, we granted initial terms so that they would submit their objections and comments to the Report. Later, on October 22, 1987, we authorized the transcript of the testimony evidence presented by the Special Independent Prosecutor, except that which corresponded to Mr. Manny Suárez. In due time, we referred to the attention of the Special Commissioner some request for additional determinations of facts which he denied. Having finished the initial processes in regards to the transcript of evidence, we again granted the parties periods of time to set out their conclusions, objections and arguments.

However, during that proceeding, on June 10, 1988, the Special Independent Prosecutor presented criminal

⁵ With this Resolution, Associate Justice, Mr. Hernández Denton issued a Concurring Vote in which the Associate Justice, Mr. Alonso Alonso, joined. Associate Justice, Mr. Rebollo López dissented in writing.

charges and accusations for perjury against the respondents Colton Fontán, Figueroa Vivas and Miró Carrión. In view of this new situation, this forum agreed to postpone all decision until the proceedings finished in the Superior Court, San Juan Part. The accusations against Colton Fontán and Figueroa Vivas were dismissed, and on March 6, 1990, the dismissal and filing of the charges against Miró Carrión was ordered.

Subsequently, *sua sponte*, we broadened our previous order and authorized the transcript of the remainder of the testimony of the witnesses presented by the respondents. This proceeding having been complied with and the last transcript having been brought up to us on September 25, 1990, we resolve.

III

Adjudicative Methodology:-

In good adjudicative methodology the present decision has required the patient reading and evaluation of a transcript of evidence in excess of three thousand (3,000) pages and the conscientious and careful analysis of documentary evidence consisting of two hundred and thirty three (233) exhibits corresponding to numerous sworn statements, photographs, notes, newspaper clippings, video-cassettes, etc. This monumental task was simplified by the elaborate and reasoned Report of the Special Commissioner, Judge Limardo, who included a chronological appreciation of all the crucial facts and pertinent incidents.

Our judgment of the ethical conduct, actions and omissions of the respondents is the exclusive product of

that analysis. It basically relies on the facts which we considered clearly shown. *As an expositive technique, the determinations of facts of the Special Commissioner have been the starting point for our decisional framework.* A substantial part of same is based on the documentary evidence, which permitted us to confront it directly and verify its correctness. *To gather and reproduce completely the text of his determinations has been an imperative.* On those rare occasions in which we have considered valid the objections of the Special Independent Prosecutor or of any of the respondents, or where it was necessary for us to stray from the determinations of fact, we so expressed it in the main text or by way of brackets or footnotes.

IV

Facts:-

Atty. Colton Fontán was admitted to the practice of law on December 14, 1967. By the first quarter of the year 1978 he occupied the position of Special General Prosecutor III and directed the Criminal Investigation Division of the Department of Justice. Atty. Angel Figueroa Vivas was admitted to the profession on June 26, 1973. By July 25, 1978 he was the Director of the Special Investigations Bureau (SIB) of the Department of Justice. Atty. Juan E. Brunet Justiniano, was admitted to the profession on June 11, 1969 and entered the Department of Justice in 1970. In 1982 "he went on to occupy the position of Assistant Prosecutor in the Criminal Investigations Division of that department. In this same year he worked for the Terrorism Unit of the Department of Justice. He was away from said department during the period of April 15, 1976 to

July 11, 1977 when he returned. By July of 1978 he occupied the position of Special Prosecutor I. (Exh. SIP, pp. 182-83)." *Atty. Aurelio Miró Carrión* was admitted to the practice of law on June 5, 1974 and entered the Department of Justice in 1970. "He [b]egan his legal profession as Legal Advisor of the Puerto Rico Police, a position which he occupied for 9 months; afterwards he worked as a Prosecutor in the District Court with duties in Humacao. *Atty. Osvaldo Villanueva Díaz* was admitted to the profession on November 18, 1965. Towards October of 1978 he occupied the position of Special Prosecutor in the Superior Court, Carolina Part."

All, as we shall see, intervened as prosecutors, in the episode known as the events of Cerro Maravilla on July 25, 1978, in which Arnaldo Darío Rosado and Carlos Soto Arriví died. This drama did not commence on this date. It was preceded by "the subversive activities carried out by two groups infiltrated by an undercover agent of the Puerto Rico Police, Alejandro González Malavé, under the pseudonym of 'Fraile.' One of them (*Anti-Imperialist Forces*) composed by John Edward Sanders Maldonado, Leoncio Figueroa and William or Guillermo Segarra Rivera and another (*Armed Revolutionary Movement*) by Arnaldo Darío Rosado, Carlos Soto Arriví, Erich Rodríguez, Ramón Rosado Ruiz and Enrique Escalona Marrero.

González Malavé performed as an informer for the Police for a period of 4 years; after March 9, 1977 he entered same as an agent of the Intelligence Division in the position of undercover in said subversive groups, a task which he performed until July 23, 1978. As such he formed part of the described groups in which he performed in a

highly active manner to the point of being the protagonist in both. For example, in relation to the placing of a bomb on April 30, 1978 in the post office at the 65 Infantry, said explosive artefact was concocted in his presence, in his home and transported for its placement in a vehicle of his property driven by him, a 1971 Volkswagen, license plates 12F876. Likewise, when the same group attempted an act of sabotage throwing chains against some lines of the Water Resources Authority (WRA) in Hato Rey on January 15, 1978, it was transported in that same vehicle driven by González Malavé, on this occasion using plates of another vehicle which had been stolen on January 2, 1978. On another occasion, on July 4, 1978, González Malavé and the group, Armed Revolutionary Movement, through Darío Rosado, Soto Arriví, Rosado Ruiz, Escalona Marrero and Erich Rodríguez held up, through the use of fire arms, the police station of the university guard of the Río Piedras campus of the University of Puerto Rico. They reached this place in González Malavé's car, driven by him. As a result of this assault they seized several radios (walkie-talkies) after keeping a sergeant of said guard at gun-point. González Malavé had active participation in this attack. In this attack one of the assailants battered and shot a university guard laying on the floor of these quarters. Another situation which is related with the expressed intention of the Armed Revolutionary Movement to carry about the kidnapping of the son of Judge Blanca I. Bonilla. For reasons which are not clearly established in the evidence, this did not take place. Another subversive activity in which González Malavé participated actively refers to a shoot-out carried out by a group belonging to the Anti-Imperialist Forces

against the residence of former governor Luis Muñoz Marín at Trujillo Alto. The participants in this act were transported to that place in González Malavé's automobile, driven by him.

Prosecutor Brunet Justiniano, intervened in the Terrorist Unit and "was in charge of undercover agent Luis Daniel Erazo Félix, infiltrated in similar subversive groups, up to the moment in which that agent was burned or uncovered as a member of the Police. At this time, Officer Desiderio Cartagena directed the Intelligence Office of the Police."

During the first quarter of 1978, Prosecutor Colton Fontán requested of the Special General Prosecutor, Atty. Gerardo Méndez Correa, an official with broad experience in said division, "that he be in charge of taking sworn statements of undercover agent who was then at that time moving within and was infiltrated in the expressed groups. At that time, there was a strike labor movement in effect against the WRA. The indicated request arose as a result of an act of sabotage against property of said governmental authority by the throwing of molotov cocktails against an electric plant in Hato Rey in which said undercover agent intervened. Prosecutor Méndez Correa established as a condition to the execution of said aforementioned task the norm that the testimony of the undercover agent be immediately perpetuated through the taking of a sworn statement of what occurred. This condition did not seem to have the acceptance of Atty. Colton who agreed with Lieutenant Jaime Quiles, of the Intelligence Division of the Police and supervisor of the undercover agent, that the sworn statement not be taken because *the molotov cocktails cast in*

the act of sabotage did not have any effect. Prosecutor Méndez Correa did not even get to know the identity of the undercover agent and in an unexplained manner apparently they desisted of the request made of him in view of the fact that he was never again called for the expressed purpose.

Subsequently, at the request of the officer Desiderio Cartagena and with the approval of Atty. Colton, Atty. Brunet was designated to take charge of the taking of sworn statements of undercover agent González Malavé.

As a result of said designation, Atty. Brunet took sworn statements from undercover agent, González Malavé, in a confidential manner at Isla-de Cabras, with the intervention of a typist of the Police and in the additional presence of Lieutenant Jaime Quiles, on the 20th and 27th of June and July 12, 1978. In these sworn statements said undercover agent *informed with great detail the subversive activities in which he participated*, already mentioned, of the placing of the bomb at the 65th Infantry Post Office, the shoot-out at the residence of former governor, Luis Muñoz Marín, the assault on the university guard station and the acts of sabotage against property of the WRA through casting of chains and molotov cocktails at an electric plant in Hato Rey and electrical lines; likewise the proposed kidnaping [sic] of the son of Judge Blanca I. Bonilla in addition to the purchase of a shotgun (Exh. 19 and 20 SIP)."

"Atty. Brunet is[was] conscious, as a prosecutor, of his obligation to request the conveyance of the corresponding criminal process in the case of the commission of a crime through the accumulation of the necessary

evidence and the submission of the case before a court. . . ." The circumstances related to him by González Malavé included the commission of crimes. Brunet conceived the action of burning said undercover agent appropriate and in that manner avoid the commission of further crimes and the protection of life and property." To said end he so recommended it to Lieutenant Quiles on July 12, 1978. That recommendation was not followed. Atty. Brunet did not pursue the matter. On July 14, he began to enjoy his regular vacations. He "understood that the function of an undercover agent remained under the complete control of the Police and that he could do nothing to avoid the described risks; that in those cases in which he intervened with the undercover agent, different from others, in spite of the fact that his investigation determined the commission of a felony, he did not have the responsibility and obligation of taking sworn statements and subpoenaing witness in the accumulation of the necessary evidence and submit it before a magistrate for determination of probable cause, since he understood that the law did not authorize him to 'give orders' to the Police. (Exh. 21 SIP, pp. 109-112). In addition to having acted under this understanding, he stood also on the previous experience when he worked for the old terrorism unit of the Department of Justice, which ended its functions in 1974, where his recommendation to burn an undercover agent was rejected by the Police Superintendent. (Exh. 21 SIP, pp. 26-30).

The expressed attitude of Atty. Brunet in relation to the information that he received through those sworn statements reached the point that he delivered the original document of same to the Police official there present

for its filing in the Intelligence office of the Police, without even keeping copy of these. (Exh. 83 SIP, pp. 35-40 and 52-56).

The inaction or lack of endeavor on behalf of Atty. Brunet to initiate the corresponding criminal proceeding or proceedings which motivated the subversive and criminal activities described by the undercover agent González Malavé in the quoted sworn statements presented before him, permitted that the Intelligence Division of the Police kept said undercover agent in the planning of endeavors which constituted crimes; *behaving more like a criminal inciter than as an undercover agent directed to the prosecution of this type of activity.* The degree and nature of the intervention of said undercover agent, joined to the official inaction described by Atty. Brunet, *set the basis and allowed the commission of those other acts contrary to the law which these facts describe and which put at serious jeopardy the security of other persons.*

González Malavé and the components of the Armed Revolutionary Movement, Darío Rosado, Soto Arriví and Rosado Ruiz, argued about an assault before mid-day of July 25, 1978 at the towers or antennae of station WRIK-TV Channel 7 of Rikavisión located at Cerro Maravilla in the Toro Negro sector of the Municipality of Jayuya with the purpose of broadcasting some communiques. The Intelligence Division of the Police kept abreast of said plan through the communication transmitted by González Malavé to the agent of said division, Carmelo Cruz, who was the person in the Police who served as the contact agent with the aforementioned undercover agent.

App. 18

The evidence does not establish with complete precision how and where the idea to assault these towers originated. The sworn statements of Ramón Rosado Ruiz and González Malavé of July 27th and 31st, 1978, respectively, inform that it originated on July 21, 1978 in Darío Rosado's home. (Exhs. 30 SIP and 73 SIP, p. 5). However, they also inform that on July 20th, 1978 the photographer and agent of the Intelligence Division, accompanied by Lieutenant Jaime Quiles photographed the area of Cerro Maravilla. The photos were delivered to Major Angel L. Pérez Casillas. (Exh. 24 SIP, part II).

Major Angel Luis Pérez, who then directed the Intelligence Division of the Police, had under his charge the organization of a police operation of around 20 agents at Cerro Maravilla and the adjacent area to ambush at the Rikavisión facilities that group of three persons which the aforementioned undercover agent would lead there. They expected that the assault would occur on July 24th and from that date several agents were posted at various points in that area. Upon finally knowing that the same would be carried out the next day, some of the agents returned to San Juan, others remaining there overnight until the following day.

The last communication had González Malavé in relation to the planned subversive activity took place between 2:00 and 2:30 a.m. of July 25, 1978 in front of the building formerly occupied by the Sears store in Hato Rey. At this time, Lieutenant Jaime Quiles and agent Carmelo Cruz conversed with González Malavé giving him the instructions to carry out the terrorist act according to what had been established. It was already known among them that they would take a hostage, preferably a

App. 19

public vehicle driver, in whose vehicle they would transport themselves to the Rikavisión facilities at Cerro Maravilla.

Carmelo Cruz and agent Antonio Méndez of the Intelligence Division stayed very close to the main gate of the University of Puerto Rico at Río Piedras close to 8:00 a.m. of that July 25th to observe and follow González Malavé and the components of the group which would meet very close thereto to begin their trip to Ponce. First González Malavé and Darío Rosado arrived and then Soto Arrivi joined them. Rosado Ruiz desisted from going with them. They had thought of boarding a bus of the Socialist League which would depart towards the town of Guánica that morning for an celebration appropriate to July 25, which would leave them in Ponce. However, the bus of that group had left and they decided to go towards Ponce in a public car by payment which they caught in front of the recreational plaza of Río Piedras. Carmelo Cruz, driving an unmarked Ford Granada of the Puerto Rico police, and agent Méndez, followed them in their route on foot up to the recreational plaza of Río Piedras seeing them board the aforementioned vehicle. Said agents of the Intelligence Division followed the three youths to Ponce in the Ford Granada.

While this was occurring, between 7:00 and 8:00 a.m. Major Pérez Casillas and Lieutenant Quiles left from the Isla Grande Airport towards the Mercedita Airport in Ponce on a first trip and in a second trip Sergeant José R. Montañez Ortiz and agent Nelson González Pérez of the Intelligence Division of the Police. At Mercedita, Nazario Mateo Espada and Miguel Cartagena Flores, agents of the Intelligence Division corresponding to the Ponce Area

were awaiting them. From there they left in separate vehicles towards the Toro Negro sector; arriving shortly before noon at the Police tower where radio transmitters are; this is located about 500 meters from the place where the Rikavisión facilities are located. At the Police tower, uniformed policeman Jesús Phiñones Quiñones, of the Puerto Rico Police, attached to the [Villalba] Police Station was already on a look-out shift. Policeman Quiñones was not part of the operation of the described agents. At that place all of the agents assigned to said operation had arrived since the day before to receive the corresponding instructions which were given to them by Major Pérez Casillas. Some of the agents assigned to this operation belong to the Special Arrests Unit under the command of Lieutenant Julio César Andrades, who was giving support in same to the Intelligence Division. All these agents were dressed in civilian clothes. Many carried long weapons and also had with them other instruments appropriate to their job, such as binoculars, portable radio transmitters and bullet-proof vests.

Already since the previous day agents José Ríos Polanco and Rafael Torres Marrero were inside the structure located on the grounds of Rikavisión, accompanied by an operator or radio-transmitter technician of said firm, Miguel Marte Ruiz. Both agents carried long weapons. Upon the arrival of the aforementioned group of agents coming from Mercedita Airport to the Police tower already there were several agents who from this place were transferred to the area of the grounds or facilities of Rikavisión to await the persons who would come to attack that property; Rafael Moreno Morales, Montañez Ortiz, who carried a regulation revolver and an AR15 rifle, William Colón Berrios, an AR15 rifle and Juan Bruno González, a shot-gun.

On the other hand, González Malavé, Darío Rosado and Soto Arriví left the public vehicle which transported them at a place in front of the Superior Court of Ponce and continued on foot until they arrived at Road 14 which goes from Ponce to Juana Díaz. Agents Carmelo Cruz and Méndez kept them under surveillance from the Ford Granada. Shortly after passing the District Hospital the three youths held up by the use of firearms, a public vehicle which they had flagged down before so that he would stop. It was the public vehicle driven by Julio Ortiz Molina who, at that time, - very close to 11:00 a.m. - drove the vehicle in search of fare. He stopped at the signal of the youths thinking that it was a question of passengers. Upon stopping, one of the youths who entered the automobile through the front door, (Darío Rosado) pointed a revolver at him, telling him that it was a stick-up; the same was done by the other one (Soto Arriví) who sat himself in the back seat through the right side of the vehicle. The third (González Malavé) went around the car through the back, opened the driver's door and at gun-point pushed him towards the center of the front seat at the same time making a movement to cock it in a clear sign of his intention of using it. The occupants made known to Ortiz Molina that they would need the vehicle to which he answered that they could take it but to let him get off. González Malavé quickly took the wheel and started driving the vehicle; upon arriving at the place where the *Lechonera El Porvenir* is found he turned to take Road Number 139. The occupants made known to Don Julio that if he behaved nothing would happen. They continued their trip until they arrived at the intersection with Road 143 which leads

towards Villalba. Agents Carmelo Cruz and Méndez who kept at a short distance and observing from the Ford Granada the attack upon driver Ortiz Molina and the taking of the public vehicle, followed this vehicle on its route to Cerro Maravilla. The three youths and their hostage continued travelling until they entered Road 577 which would take them to the Rikavisión facilities at Cerro Maravilla. González Malavé continued driving the vehicle.

Before this automobile arrived at the Rikavisión facilities there were already posted in different places inside and outside the Rikavisión structure the group of agents of the Intelligence Division and the Special Arrests Unit. Sergeant Montañez Ortiz, together with other agents, was hiding very close to the intersection of the dirt road and the paved road for the passage of vehicles that are going to Rikavisión and the facilities of Radio Zar, another radio transmitter located after Rikavisión. While the public vehicle with the hostage went up Road 577 towards the Rikavisión facilities at about 12:30 p.m., it was seen by agent Torres Marrero who kept watch outside from the inside of the building through one of the side windows, within which Ríos Polanco and Marte Ruiz could be found. Upon noticing said vehicle Torres Marrero yelled to Ríos Polanco 'suspicious car is approaching.' Ríos Polanco told Marte to take cover because the ones who were coming were coming to kill him. Marte, somewhat disbelieving, protected himself behind a transmission console. Some two minutes later, when the vehicle was very close to said facilities, Torres Marrero went towards the outside carrying a long weapon by the main door of the structure which goes towards the front of the same in which said

vehicle would park. Immediately, Ríos Polanco placed himself at the window which faces the front of the building or the gates of Rikavisión, he broke the metallic screen of the window in front of him with the muzzle of his rifle, he placed the barrel part towards the outside and began to shoot, initiating a volley of many shots in the exterior of said building for a period of several seconds.

Before the shots began, the public vehicle which González Malavé continued driving left the asphalt road 577 and entered in reverse on the dirt road which goes to the front of the Rikavisión facilities until it was parked in a parallel line with the fence and gate looking towards the front part of same. Once parked they alit from the vehicle on the right front side Darío Rosado and through the right rear side Soto Arriví, González Malavé doing the same thing from the driver's side, and the three of them placed themselves with their firearms at the back of the vehicle which was in front of the entrance gate of Rikavisión, which was closed. Darío Rosado carried a cloth mask covering his face. At a distance of some 60 feet, Montañez, who had begun to move with his men towards the vehicle, ordered the youths to stop stating 'stop, this is the Police.' Ortiz Molina observed the group of agents which advanced towards the vehicle carrying long weapons and he crawled under the dashboard of the vehicle looking for protection. Immediately thereafter the shots began. Montañez Ortiz and the agents who where [sic] with him threw themselves on the ground and began to shoot from the ground against the assailants, exchanging shots. In the midst of the shots González Malavé yelled 'don't shoot I am a policeman.'; he fell wounded in the back

part of the public vehicle, not without having made four shots. Darío Rosado and Soto Arriví shot their guns and ran towards the front of the vehicle, protecting themselves and hiding behind some of the bushes nearby. That volley of many shots, calculated at some approximately 50, occurred in a quick and continuous manner for a period of several seconds. Upon ending same, Montañez pointed his weapon towards the bushes while he observed that the two youths who accompanied González Malavé, Darío Rosado and Soto Arriví threw their weapons up into the air as a sign of surrender. *They came out unhurt from the shoot-out.* They were laid down on the ground in front of the vehicle and they were kept thus, watched by Gruno González while they took care of the wounded undercover agent on the ground, behind the vehicle. He was wounded in the abdomen area, and on a finger of the hand from which practically was part severed. Montañez Ortiz went on the right side of the vehicle and ordered the public vehicle driver, Ortiz Molina, to get out of the vehicle. He came out through the left front door and when he did so, William Colón Berrios launched a blow with the butt of the rifle without reaching him and then took him towards the front of the vehicle with the other two detained persons. One of the youths exclaimed 'this man is innocent, please, do not hurt the man, he has nothing to do [with this].' González Malavé made a similar expression.

Montañez Ortiz was depressed because he thought that he had mortally wounded the undercover agent and walked, on foot, down the asphalt road, meeting Major Pérez Casillas who was coming up to the place. Both went up on foot to the place in which the vehicle and the

two detained youths and the wounded undercover agent were located. Very few minutes had elapsed and there were around 15 police agents at that place. Major Pérez Casillas placed handcuffs on Soto Arriví with his hands behind his back. *The majority of the agents who were there were battering both detained youths in different ways; they were striking them with their hands, with their weapons and they kicked them.* (It was so testified to in court by Ortiz Molina based on what he had seen while he was there with them; likewise agent Montañez Ortiz who inclusively admitted that he had pushed and struck one of them with a shoe in a moment of indignation; Marte Ruiz testified that he observed through the windows of the building, a group of persons who were grabbing the adult man, referring to Ortiz Molina, and one of the youths who was weeping and receiving blows to the face.) The police agents were in front of both, Dario Rosado on the pavement and Soto Arriví kneeling, hand-cuffed as aforesaid. (See the testimony of Carmelo Cruz in Court.) Among the group of agents who were at this moment at the described place was Colón Berrios, Bruno González, Torres Marrero, Antonio Méndez, Reverón Martínez, Montañez Ortiz, Moreno Morales, González Pérez, Ríos Polanco, Cartagena Flores, Carmelo Cruz, Lieutenant Quiles and Major Pérez Casillas. Carmelo Cruz and Lieutenant Quiles drove González Malavé to the Hospital at Jayuya in a vehicle driven by Lieutenant Quiles. Ortiz Molina was taken to the Police tower in a vehicle driven by agent Cartagena Flores.

Montañez Ortiz again briefly withdrew from the place. This aforementioned state of mind, which made him cry, continued. He moved again towards the

asphalted road accompanied on foot by Pérez Casillas and Antonio Méndez, who consoled him indicating that the undercover agent was not so badly wounded. In addition, Montañez Ortiz felt that the situation which was being produced at that moment at that place was out of control and the only one who could control it was Pérez Casillas. However, in view of a statement which Pérez Casillas made to him on the day before, that the persons who were expected there 'had to be given a shot or a little shot,' to him it was illusory to think that a tragedy would not occur there. He knew that all of that was illegal and he didn't want to get involved with what could occur, as in effect he so expressed to Pérez Casillas later on. While this occurred, the two youths whom they had detained in the aforementioned manner were killed by means of a shotgun blast against Darío Rosado in the center of the chest and four shots from a 357 Magnum revolver to different parts of the body of Soto Arriví. This series of five shots at a much slower interval than those of the first series, which occurred some 15 minutes before, when the youths arrived at that place, was heard in different points near Cerro Maravilla. Immediately after this second series of shots, agent González Pérez came down to look for the keys to the handcuffs, which were given to him by Montañez. Shortly thereafter he left the place in a vehicle driven by Cartagena Flores accompanied by Moreno Morales with the corpse of Soto Arriví. Montañez Ortiz went back up to the place in which the youths were and observed the corpse of Darío Rosado laid out, face up, with a big stain of blood on the chest.

Subsequently during that afternoon, Montañez Ortiz expressed to Pérez Casillas his interest in that he not be

made to form part of what occurred there; that he did not want to appear in any of that. Pérez Casillas told him not to worry that he would not be there and there would be no problem.

Shortly thereafter, Lieutenant Julio César Andrades arrived at that place. Modesto Delgado, official of Channel 7 who directly supervised Marte Ruíz and who was notified by him by radiotelephone at his home in Ponce of the situation that had occurred, arrived later on. Marte had notified Adolfo Flores Monte, Sales Manager of Rikavisión in a similar manner in San Juan. Upon the arrival of Modesto Delgado, Marte Ruíz informed him of what had happened that day and the day before at the Rikavisión facilities. Both stopped that afternoon in front of the corpse of Dario Rosado who remained thrown there, when one of the police agents approached it - a skinny, tall one - and began to kick said corpse, making it shudder, while he said, 'You son-of-a-bitch you will never commit any misdeeds.' Marte Ruíz reacted to this person exclaiming, 'Hey fella, why do you do that.' The answer of the agent was, 'This son-of-a-bitch killed a policeman and he will not do it again.' During his stay there that afternoon Pérez Casillas as well as Ríos Polanco advised both Marte Ruíz and Delgado separately and jointly that 'at no time say that shots were fired from here.' By the manner in which he did so, it constituted a serious warning and threat. Pérez Casillas expressed to Delgado on another occasion that afternoon that he should speak to no one concerning what had occurred there and not to mention the existence of two volleys of shots, adding that 'it would be wise to keep your mouth shut.' Ríos Polanco made a similar warning at the same time that he pressed

one of his fingers on the forehead of Marte Ruiz in an impositive and threatening manner. On another occasion, being with Delgado, Ríos Polanco addressed Marte expressing to him in a very serious and threatening tone of voice, 'Remember Marte, no one has shot from here, no one shot a single shot from here,' referring to the fact that they could not say that shots had been fired from within the building; 'There was only one volley of shots here,' Ríos Polanco emphasized. This expression was made by Ríos Polanco in a threatening manner, with a long weapon carried in his hands at waist level.

At the time of their deaths, Soto Arriví and Darío Rosado were some 20 and 26 years of age, respectively. The pathologist, Dr. Raphael Criado, concluded that of the four bullet wounds received by Soto Arriví, only the one produced at the level of the chest intervened in the death 'because of possible lacerations to the heart, large intrathoracic vessels and the left lung which had to originate a severe internal hemorrhage.' (Exh. 67 SIP). He concluded, further, that Darío Rosado died because of an impact from a sole shotgun wound, of 00 caliber pellets and the action of a felt heel; which due to the location of the entrance orifices on the chest and the exit orifices on the back, the traumatic action of these pellets and the felt heel recuperated, as well as portions of bone recovered from the costal from the 5th and 6th fractured ribs could severely lacerate the heart and the right lung originating a great hemorrhage which we estimate was the fundamental cause of death.' (Exh. 68 SIP).

Because of the shootout, the first volley of shots described, the vehicle of Ortiz Molina resulted with several perforations and dents because of the effects of the

bullets, primarily on the left side, that is, the one that was facing the facilities and building of Rikavisión, it being parked by the youths when they arrived at that place. On that side it showed a perforation of a high caliber projectile in the center of the left rear fender and a little above same, a bullet impact without penetration. (Exh. 2 SIP). The left front door presents two bullet perforations located a little below the center of same and a little above this door pellet marks. (Exh. 3 SIP). The left front door presents two bullet perforations located a little below the center of same and a little above this door pellet marks. (Exh. 3 SIP). It also presented perforations by bullet shots on the front and on the rear of the vehicle. (Exh. 4 and 5 SIP). The glass of the front left door was completely broken.

The vehicle of the Rikavisión firm, a Volkswagen, license place [sic] 12F3091, which was parked within the lot of the facilities, very close to a small cement structure used as a warehouse, also suffered the effects of the bullets. This vehicle was parked in a parallel form to the front fence at the entrance to that transmitting station. It received two impacts, without perforation, near the left front fender, and the other in the part of the roof where the water runs (Exh. 33(a), (b) and (c) SIP).

The gates at the entrance of the Riakvisión facilities also received bullet impacts with great probability from within said facilities in view of the fact that they were closed when the first volley of shots occurred. These gates of two eaves, built of galvanized pipes of two inches and chain link fence; showed two impacts located one on each center pipe which run on a horizontal line on each sheet of same. Because of the diameter of these

impacts, it is more probable that it had been caused by projectiles of high caliber. (Exh. 34(a), (b), (c) and (d) SIP).

Subsequent to the facts related Prosecutor Santos Nigaglioni of the Ponce District Attorney's Office, together with other personnel from the Ponce Police arrived at the Rikavisión facilities. As a result of his intervention he did not take sworn statements of any of the agents who participated in those acts.

"Photographs were taken of the corpse of Darío Rosado, face up thrown on the ground. (Exh. 32(a), (b) and (c) SIP). These show the chest completely bloody and the presence of a lot of blood in the area of the nose and the mouth. His face evidences, in a clearly visible manner, marks of trauma, lacerations, multiple abrasions and swollen parts. These marks are observed over the upper section of the forehead, over the right eyebrow covering the eyelid; and over the left cheekbone and the right upper lip. The corpse of Soto Arriví was also photographed while it remained at the Jayuya Hospital. (Exhibit 70(a) and (b) SIP). These photographs also evidenced in like manner the presence of the effect of trauma and multiple lacerations in different parts of the face, with edema - beneath the right eyebrow - very close to the eyelid; and in both cheekbones, beneath the left eyebrow, above the chin and in the lower part of it, the area of the chest and the left arm. All the described marks on the faces and the bodies of Darío Rosado and Soto Arriví are clearly compatible with blunt blows received."

Policeman Jesús Quiñones began his regular work shift from 11:00 A.M. to 7:00 P.M. and arrived at the area of the Police tower as was customary at about 11:30 A.M.

Police agents who were to participate in the operation were already there.

At the time the aforementioned first series of shots were produced policeman Jesús Quiñones was climbed up at a height of 15 to 20 steps of the Police tower as part of his routine look-out. From there he observed a great part of the surrounding area and without difficulty that which is located in the facilities of Rikavisión. Upon hearing the detonations of fire arms from the first series of shots at about 12:30 P.M. and noticing that they came from the area of Rikavisión, he so notified the agents who had remained below, who immediately went towards that place. Jesús Quiñones remained an additional brief time up in the tower until he observes the vehicle that took Ortiz Molina to that place. He knew the driver, Cartagena Flores, by sight while the latter served in the Juana Díaz zone where Jesús Quiñones was stationed. Upon the arrival of Cartagena Flores, he made a sign to policeman Jesús Quiñones placing the index finger upon his closed mouth indicating that he should remain quiet; *he informed him that there was a wounded policeman and two dead persons, Ortiz Molina interjecting that the two young men were alive and mentioning the many kicks that the police had given those 'boys'*. Ortiz Molina also related at that time, having observed there when one of the agents beat one of the youths saying, 'Son of a bitch, didn't you want to kill a policeman?, kill him now'; *also of the experience he suffered when he was held up by the youths*. He also related to that which was expressed by said kidnappers while he was kept as a hostage during the trip towards Cerro Maravilla to the effect that they would later attack other places. In relation to this last thing Policeman Quiñones advised

Cartagena of the importance of notifying the corresponding officer and he offered to do it himself. Cartagena Flores answered him that he should stay with Ortiz Molina and he would do it. After that, Cartagena Flores returned to the area of the facilities of Rikavisión, leaving Ortiz Molina with Policeman Quiñones. Ortiz Molina continued to narrate to Policeman Quiñones most of the experience he had just gone through. He explained to him with great detail what had happened prior to the shoot-out when he hid beneath the dashboard of his vehicle and of the butt of a rifle launched at him by one of the agents upon alighting from his vehicle; also the petition of the youths that he not be harmed because he had nothing to do with that. Quiñones utilized the time and took care of a small wound that he saw on the finger of Julio Ortiz Molina putting a band-aid from the first aid kit he had available there. A short time later the aforementioned second volley of shots was heard. Ortiz Molina and Policeman Quiñones heard it noticing that it was at a much slower frequency than the first; consisting of some five detonations which came from the Rikavisión facilities.

González Malavé arrived at the Jayuya Health Center between 1:00 and 1:30 P.M. He was taken care of by Dr. José Ramos Rivera, a physician of said center, who referred him to the Ponce Hospital where he was taken immediately.

The corpse of Soto Arriví arrived at that health center some 45 minutes later in the back seat of the vehicle driven by Cartagena Flores. Dr. Ramos Rivera placed it in the morgue of said hospital.

During the latter part of the afternoon of that day, the agents of the Intelligence Division and of the Special

Arrests Unit of the police slowly left the area of Cerro Maravilla, some towards Ponce and others towards General Headquarters in San Juan.

Julio Ortiz Molina is at the present time 66 years of age; he studied up to the third grade of elementary school; is a veteran of the Second World War, having served in a unit of the United States Army in the capacity of rifleman; passed his basic training in weapons handling during a stay in the Army. He was discharged in 1946; after that he worked in a cloth factory for a period of two years as a gluing machine operator; then he administered a small grocery store and subsequently operated another small store of that kind of his own property for two years. In 1962 he began as a public vehicle driver, a job which he performed during 17 years. He was a delegate for a long time for the Drivers' Union of Ponce, which he got to preside. At the present time he is retired and lives in the city of Ponce.

Ortiz Molina was taken to Ponce in a vehicle accompanied by Prosecutor Nigaglioni, the police agent from Ponce, Félix Santiago and two persons who carried photographic cameras. His public vehicle was transferred to the Ponce Police Headquarters by one of the police agents of same. On the return route to Ponce they stopped at a restaurant to have some refreshments. At this place Ortiz Molina had the opportunity of speaking with Félix Santiago concerning what had occurred. He knew him for several years and considered him a good person. He got to express to him the fact of having heard two volleys of shots. However, he did so making sure that he was not heard by Prosecutor Nigaglioni. Ortiz Molina had noticed that the Police were involved in what had happened, he feared for his life and at that

moment did not know what he would find upon arriving at the Ponce Police Station. Finally they arrived at Ponce, Prosecutor Nigaglioni going first to the Hospital wherein the undercover agent was. Afterwards they transferred themselves to the Police Station on Molina Street where the two persons described as photographers stayed and from there to the Police Station at Calle Hostos of that city. At the Police Station, Prosecutor Nigaglioni would take a sworn statement from Ortiz Molina. His fear of spontaneously narrating everything that he saw and heard at Cerro Maravilla continued, particularly the aggression of the youths and the fact of the two volleys of shots; specially when the sworn statement which Prosecutor Nigaglioni was taking was being typed by Police Captain Leonardo Ortiz of the Police of that station. That sworn statement was taken on the third floor of the Police Station in circumstances in which persons went in and out and which on occasion got close enough to hear what he was testifying to Prosecutor Nigaglioni and transcribed by Captain Ortiz. The following is the sworn statement given on that night of July 25, 1978 by Ortiz Molina before Prosecutor Nigaglioni at the Hostos Street Police Station in Ponce:

"Q. What is your occupation?

R. I am public vehicle driver and I work the route from Ponce to Juana Diaz.

Q. Tell me if today July 25, 1978, at around 11:00 of the morning you were going towards Juana Diaz?

A. Yes, sir.

Q. Tell me if on the route from Ponce to Juana Diaz anything occurred?

A. When I was in front of the Rehabilitation and Social Treatment Center three individuals made signs for me to stop. They appeared to be Boy Scouts, since one of them carried a bag hanging from his shoulder like the ones the Boy Scouts use, further they had fatigues. I thought that they were three passengers, I stopped and then one of them got into the front seat, and the other got into the back seat and the third one went around on my side, he opened the door and pointed a gun barrel at me and told me to move over and let him drive. There I became aware that it was a serious matter and I obeyed them. The individual took the wheel, started the car and took the road towards Mayagüez [TRANSLATOR'S NOTE: THIS SHOULD READ MACÜEYES].

Q. After those three individuals got into the car, tell me what they did and what they told you?

A. They told me that I should be still, not to try to be smart and offer resistance if I didn't want to lose my life. Further they told me that they were not going to do anything to me, since they belonged to RD or RA, I don't remember well which of the two was the one that they said. That what they wanted was for Puerto Rico to be free. That they proposed to take the first car that stopped, but I had the bad luck of being the first one that went by. On the way they commented that if I remained still they were going to do what they were going to do quickly and then they would take me to a safe place, but that they would take the car

with them and they would leave it in a safe place.

Q. Did they say what it was they were going to do?

A. They told me that they were going towards the tower to destroy something, they didn't tell me which Tower it was.

Q. While they were in the automobile did these persons strike you?

A. No, sir, they only threatened me so that I would stay still.

Q. Could you see what weapons those individuals had?

A. The one that sat next to me on the right hand door had a revolver with a long black barrel.

The one that sat on the back seat had a gun and he pointed it at me on the back part of the head. The one that took the wheel also had a large black pistol, it had a 3 to 4 inch barrel.

Q. Did you notice if they were carrying any other weapon or any other equipment?

A. I heard that they were speaking that they had grenades and dynamite cartridges, and they spoke that they had another 38 calibre revolver.

Q. On the way, did you see what they had in the bag that looked like the ones the Boy Scouts use?

A. No sir, I didn't see it.

Q. When they arrived at the tower, what did those individuals do?

A. We stopped the car and they backed it up and stopped it in front of a tower. Then they got out of the car and said let's act quickly. Then they exchanged weapons amongst themselves before going inside and at that moment I saw some armed people came out trying to stop them and when I saw that there could be a shoot-out I got beneath the dashboard of the car and I heard the shoot-out.

Q. Witness, given the position in which the three individuals that took your car were and given the position where the persons who came out with the weapons in front of the car, which one of the two groups would you say shot first?

A. The three individuals who took my car.

Q. Why do you say that it was the three individuals that took your car?

A. Because the detonations came first from the back of my car, which is where those who took my car were.

Q. Tell me if your car suffered any damage?

A. Yes sir, it has three bullet impacts on the left side, two on the left front door and one in the fender of that side and others which went out through the top of the trunk lid. The shots on the door destroyed the window.

Q. Tell me if you saw the persons that resulted wounded there?

A. I didn't see them since *they detained me also*, I couldn't see them.

Q. The persons who took your vehicle, had you seen them before?

A. No sir, I had never seen them before.

Q. Do you know to what specific tower it was that you arrived?

A. Well, it is the tower of Channel 7 of Television and another tower which is next to it which I think belongs to the Telephone Company.

Q. Did you notice if when you arrived at the tower, prior to alighting from the vehicle whether they extracted any equipment from the valise or bag that they were carrying?

A. Well since they didn't allow me to look in the back during the trip and also upon arriving they told me not to look back, nor to the sides, I felt them doing something but I didn't see.

Q. These persons were young persons or older persons?

A. They were youths, around 20 years of age.

Q. Did you hear these persons make any other comments during the trip?

A. They said that they had to follow the route to Mayagüez to meet with the group in Mayagüez.

(signed) *JULIO ORTÍZ MOLINA*
(Exh. 6 SIP)

After Ortiz Molina gave the sworn statement his vehicle was returned to him *that same night* and he returned to his home.

On the afternoon of that July 25th Major Pérez Casillas, already back at General Headquarters, requested the presence of Atty. Brunet. He ordered that he be gotten at his home where he was enjoying regular vacations. Atty. Brunet arrived at General Headquarters at about 6:00 P.M. Very close to his arrival he noticed the presence of Sergeant Montañez Ortiz while he unloaded three long weapons from a grey police van *which transferred them from Cerro Maravilla to said police station*. Atty. Brunet knew Montañez Ortiz when he intervened as prosecutor in charge of the undercover agent Luis Daniel Erazo Félix, since Montañez Ortiz then acted as supervisor of the undercover agents under the Strategic Services Unit of the Intelligence Division of the Police. *Due to the encounter he had with Montañez, Atty. Brunet noticed that in fact he was returning from the Cerro Maravilla operation.* (Exh. 21, SIP, pp. [56], [66] 76 and 77; Exh. 22 SIP, pp. 237, 241; Exh. 83 SIP, p. 11).

Atty. Brunet met that night with Pérez Casillas at the Police Station; he explained to him what had occurred at Cerro Maravilla and his version that the youths had died as part of a shoot-out and exchange of shots which developed there between them and the police agents. (Exh. 22 SIP, pp. 240, 241). In view of the fact that the function of González Malavé as an undercover agent had concluded, the request of Pérez Casillas to Atty. Brunet was for the purpose that he initiate the necessary steps to obtain the accumulation of the corresponding evidence and *to submit to the courts the cases in which González Malavé had*

intervened as an undercover agent. Atty. Brunet examined at the police station the file that contained the different reports of González Malavé's interventions. He concluded his task at about 9:[0]0 P.M. (Exh. 17 SIP, P. [44]). He obtained the authorization from Atty. Colton on the following day to go forward with the criminal action related to the cases of the undercover agent. In his communication with Atty. Colton he didn't inform him of his observation at the Police Headquarters the night of July 25th of *having seen Montañez Ortiz coming from Cerro Maravilla* nor of his conversation with Pérez Casillas in which he offered the quoted version of what happened to the youths. *Atty. Brunet did not consider that it was important to transmit this information to Atty. Colton[,* nor subsequently to Prosecutor Villanueva Díaz]. (Exh. 26 SIP, pp. 142, 187).

Atty. Brunet was requested by Atty. Colton as one of the prosecutors who would participate in the investigation of the events of July 25, 1978 at Cerro Maravilla. His first endeavor consisted in taking the sworn statement of undercover agent González Malavé on July 31, 1978. Atty. Colton would be that day intervening in the taking of a second sworn statement by Prosecutor Nigaglioni of Julio Ortiz Molina, as a result of the situation which arose because of the newspaper information which appeared in the country's press in which it quoted the public vehicle driver as making charges of murder against the police and of the existence of a new version of his of what occurred at Cerro Maravilla, in comparison with what he stated on July 25th to Prosecutor Nigaglioni.

Atty. Brunet did not get the proper background and sufficient preparation for the sworn statement which he took of González Malavé on the aforementioned date. On the contrary, the circumstances in which he carried out

that task indicate that because of this lack of background and due preparation *he did not act with the investigative inquisitiveness* which would allow him to verify, question or corroborate the different aspects of the version offered in that statement by González Malavé; likewise that would qualify him to avoid being a mere receptor of his statement and of into same only what appeared relevant to the affiant. *As a matter of fact, before taking the sworn statement Atty. Brunet did not get to go to the site nor see the photos of the corpses of the dead youths nor examine the autopsy reports.* (Exh. 22 SIP, pp. 256 and 257). Atty. Brunet took the aforementioned sworn statement stated from González Malavé on July 31, 1978 at the Industrial Hospital of the Medical Center of Río Piedras, where said agent was hospitalized. (Exh. 30 SIP). *In spite of the fact that as of that date the case of the deaths at Cerro Maravilla had gotten notoriety because of the newspaper information which put in doubt the actions of the police agents in same, Atty. Brunet took this statement of said agent in the presence of Lieutenant Quiles who in turn had participated in the facts under investigation.* He did not use the services of the Department of Justice to take it, instead that same was carried out through the intervention of a stenographer of the Intelligence Division of the Police. This stenographer was a person whom Atty. Brunet did not know and who kept the stenographic notes of the statement taken for subsequent transcription. (Exh. 83 SIP, pp. 48 and 49). In this manner Atty. Brunet did not keep the results of the statement taken. As of that date *none* of the police agents who intervened in the events at Cerro Maravilla had given a sworn statement so that because of this the version of González Malavé, eyewitness of the events testified upon would reach the Intelligence

Division of the Police. This action of Atty. Brunet took place in spite of the fact that it did not correspond to the best practice, specially in this stage of the investigation, in which the information submitted by the Puerto Rico Police in this way could decrease the value of the purposes of discovering the truth of what happened at Cerro Maravilla. (Exh. [83] SIP, pp. 49, 55, 56-60); specially, in this instant where the action of the police agents was publicly questioned. (Exh. 83 SIP, pp. 37-52).

Through the sworn statement given by González Malavé on July 31, 1978 to Atty. Brunet got direct knowledge through the testimony of this eyewitness of the facts which he himself related, the fact of having heard a *halt* coming from the inside of the Rikavisión facilities and the fact of having identified Soto Arriví, the presence of a person there *inside before the shooting began*. (Exh. 22 SIP, pp. 257-259).

In the days following July 25, 1978, Ortiz Molina offered to the news media of the country a version of the facts which occurred at Cerro Maravilla which included an affirmation that the youths had not been wounded after the first volley of shots, but instead detained, then beaten and the existence of a second volley of shots tied to the deaths which occurred. He also gave a sworn statement before Atty. Julio Alvarado Ginorio on July 28, 1978 in which he covered these aspects. (Exh. 7 SIP).

In view of the public situation which arose because of the subsequent statements of Ortiz Molina, this was brought to the attention of the Ponce District Attorney's office for the taking of a new sworn statement before Atty. Nigaglioni on July 31, 1978. He appeared on the morning

of that day at the Ponce District Attorney's office and in the presence of Prosecutor Nigaglioni and Atty. Colton. With this intervention of Atty. Colton and the one which on the same day was being carried out by Atty. Brunet through the taking of the sworn statement of Alejandro González Malavé, *it was evident that the Division of Investigation and Criminal Processing of the Department of Justice had assumed the direction of the investigation of the events of July 25, 1978 at Cerro Maravilla.*

In the taking of this new sworn statement from Ortiz Molina *the strong harsh treatment on the part of Atty. Colton of this witness was prominent. Atty. Colton accused him and mistreated him through the utilization of a loud voice and violent tone because of the fact of the statement issued by him to the press, which Atty. Colton pointed out that represented a deviation from that manifested by said witness to Prosecutor Nigaglioni in his sworn statement of July 25, 1978, Atty. Colton said Ortiz Molina on this occasion that although he considered him "a good person" he was going to have to accuse him for perjury for having made statements to the press which were not originally made to Prosecutor Nigaglioni. Ortiz Molina reacted to this insisting that what he had said to the press was the truth of what had occurred at Cerro Maravilla, and that he understood that no contradiction existed on his part between what he stated to the press and what he stated to Prosecutor Nigaglioni in the aforementioned sworn statement of July 25, 1978. Atty. Colton insisted on his position and threatened that he would put him in jail for perjury, demanding that he had to change the statement given to the press. Prosecutor Nigaglioni who accompanied him, did not treat him with harsh words but he echoed Atty. Colton in this request*

expressing to him that he should change his statement since it did not coincide with what he had stated at the police station on July 25th. Atty. Colton requested of him, further, that he had to discontinue his statements to the press. The situation got to a point that Ortiz Molina insisted that he not be pressured. When this occurred, Atty. Colton got up in a violent manner and left the place strongly slamming the door with great strength. Ortiz Molina remained with Atty. Nigaglioni and concluded the second sworn statement before him. (Exh. 8 SIP).

The described incident in which Atty. Colton strongly scolded Julio Ortiz Molina was observed by prosecutor Julio León Ríos of the Ponce Superior Court, who shared offices in the Ponce District Attorney's office with Prosecutor Nigaglioni. Prosecutor León Ríos expressed having heard when Atty. Colton, in a rather violent attitude, got up upset and told Molina 'you lying old man'; [he] further expressed that while this occurred Ortiz Molina seemed nervous and crying.

(As a matter of fact, independently of the attitude assumed by Atty. Colton in the presence of Ortiz Molina already described, the expressions attributed to said witness by the news media that he had heard two volleys of shots and saw the youths detained and alive after the shoot-out, do not conflict nor reflect contradiction with his original statement of July 25 before the Prosecutor Nigaglioni. None of the questions and answers of his statement of July 25th specifically required or set out concerning what happened after the shoot-out to the youths who kidnapped him; therefore, what Ortiz Molina really did through his new statements was express himself about something that had not been asked of him by Prosecutor

Nigaglioni in his interrogatory of July 25, 1978. (Exh. 6 SIP). The only question of said interrogatory close to the subject consisted in requesting him to state if he *saw the persons who resulted wounded there*. His answer of not having seen them because detained 'also,' gave the clear implication that the youths were, as well as he, detained, and therefore, that they were alive after the shoot-out. Likewise, his new statements were compatible with what was perceived by him at Cerro Maravilla and the area of the Police Tower, with the version that he offered shortly afterwards to Policeman Jesús Quiñones at this place and with his position before Prosecutor Nigaglioni and Atty. Colton when these called him to give a new sworn statement on July 31st at the Ponce District Attorney's office that his statement of July 25 was not being contradicted. It was so reaffirmed by him specifically to Prosecutor Nigaglioni in his sworn statement of July 31, in which he sustained in his sworn statement of July 25 that he was not lying. (Exh. 8 SIP, p. 1). As a similar matter of fact, neither did it represent a contradiction his answer of having heard 'just one shoot-out' to the question as to how many shots there were 'from when the three persons who took [your] car alit [you] left the specific site.' (Exh. 8 SIP, p. 3). What occurred, to which the version of what he perceives adjusts, shows that while Ortiz Molina was at the specific site of the facts, that is, in front of the facilities of Rikavisión where they happened, there was only one shoot-out. The evidence established the occurrence of a second shoot-out, some 15 minutes later when Ortiz Molina was already out of that place – in the place of the Police tower together with policeman Quiñones. Likewise, his other answer of 'No, sir, I don't know which of the three' to the question

of whether 'after the shoot-out did you note which of the three persons that took the car resulted wounded' represented the reaffirmation of his version of what he perceived occurred there to the effect that *only one* of the persons that took the vehicle resulted wounded, which one he did not know (Exh. 8 SIP, p. 3). This answer is significant in the evaluation which we must make of the reactions or manifestations of the respondents against which this proof is offered into evidence in view of what was requested by the terms of the question itself: in both sworn statements which Julio Ortiz Molina gave before Prosecutor Nigaglioni - that of the 25th and 31st of July, 1978 - that question constitutes the first and only one which specifically is posed to him for him to testify concerning which of the three youths that kidnapped him turned out to be wounded by the effects of the shoot-out. The fact of it having been formulated in the plural (which) and having answered in the singular does not permit the inference or any interpretation that Ortiz Molina was testifying that at that moment he had seen more than one person wounded after the shoot-out and 'at the moment that [he] was still there,' that is, at the specific site in which the shoot-out occurred. Therefore, he was answering in a manner compatible with the version that of the three persons, only one turned out to be wounded in the shoot-out. For a better comprehension of this explanation which we make in order to evaluate this proof, [we] transcribe the already mentioned sworn statement provided by Ortiz Molina before Prosecutor Nigaglioni on July 31, 1978.

(The statement which we transcribe constitutes a literal transcript of Exh. 8 of the SIP submitted into evidence. The same contains incomplete words without it having

been possible for the Special Commissioner to substitute the document).

'That I am of the personal circumstances already stated.

Q. Don Julio, you will remember that on July 25, 1978 after the two events at Mount Maravilla in Villalba wherein youths resulted dead I took a sworn statement from you so that you would state what you had observed there. In the sworn statement which you gave me or stated that the three persons who took the car from you were the first ones to shoot and you stated further that after the shoot-out you did not see the wounded persons. Through the news media you have said and informed the news media that you have stated the contrary. I ask you now if you reaffirm the statement which you gave me on the day in July of 1978?

A. Yes sir, I stand by what I said.

Q. Could you explain why you told the news media that the agents had fired first?

A. What I said to the news media was that I had heard one detonation behind my automobile which was where the three that held me up were but that couldn't be precise as to the moment of the shots.

Q. That is, that the agents were not the first ones who fired, would you?

A. According to what I heard, the shots came from behind the car and not from . . .

Q. Did you see persons hand-cuffed there?

A. No, I did not see them.

Q. Witness have you given any other sworn statement after the one that you gave me on July 25, 1978?

A. Yes sir, before Atty. Julio Alvarado Ginorio, on Friday, July 28, 1978.

Q. Who took you to give that sworn statement there?

A. I went on my own to speak to him to see what rights I had to claim for the damages which I had received on the car, in regards to my work and in regards to my physical condition.

Q. Did they ask you to inform that by way of a sworn statement.

A. Yes, sir.

Q. Who asked you?

A. Atty. Ginorio.

Q. You have told the news media that the agents who intervened at Mount Maravilla in this car are murderers, did you say that to the news media?

A. No sir, I did not say that, at least it was not my intention to say that.

Q. Did you have any visible blows?

A. I have a scratch on the middle finger, of the left hand.

Q. How many agents were the ones that you saw come from the front?

A. About ten agents.

App. 49

Q. Tell me if you heard any exclamation from anyone during the . . . ?

A. I heard, 'don't shoot at me I'm an agent.'

Q. Was that all you heard?

A. Yes sir. And almost immediately I heard a cry of help which I don't know - the same voice of the agent.

Q. From the time the three persons that took your car alit from it until you left the specific place of the facts, how many shots were there?

A. Only one shoot-out.

Q. Witness who was it, which of the three persons that made the sign for you to stop?

A. The one who got in the front seat on the right.

Q. What was the one who got in the front seat on your right like?

A. Light medium complexion. I can't, I couldn't notice him very well because they didn't let me look towards the sides or towards the back.

Q. Did any of the three stand out in the direction of what they were going to do, that is, in the command of what they were going to carry out?

A. The three acted the same. When we were close, reaching the Tower, the one that was in front on the right said 'from now on what I say is what is going to be done.'

Q. During the trip did you know which of them was the undercover agent?

A. No sir, and I still couldn't say which of the three was the undercover agent.

Q. After the shoot-out there and at the moment in which you were there of the shoot-out did you notice which of the three persons who took your car from you was wounded?

A. No. sir, I couldn't tell you which of the three.

Q. Do you know which of the three persons was the one who directed the attack on your car?

A. the three pointed guns at me at the same time.

Q. Did you hear if the Police ordered the three youths to halt?

A. If they said it I didn't hear it.

Q. Tell me Don Julio do you feel mentally well?

A. Yes sir.

(Signed) JULIO ORTÍZ MOLINA"

On August 2nd, Prosecutor Miró Carrión was called by Atty. Colton so that he would participated [sic] as an additional prosecutor in the investigation.

Having been recently named assistant prosecutor in Humacao, beginning on that same August 2nd, he was "transferred to the Criminal Investigation and Processing Division of the Department of Justice from that date and his first endeavor under the position of Assistant Prosecutor of the Superior Court was his intervention in the

investigation of the events at Cerro Maravilla from the first day of his transfer from Humacao to the Department of Justice in San Juan.

Before initiating his investigation Atty. Miró was not given nor did he examine any document or evidence which may have been obtained related to the events at Cerro Maravilla which would permit him to know the background of the case to be investigated. He only knew of the newspaper reports published to that date. Nor did he carry out any type of examination of document or any other evidence that would put him in a condition to initiate an effective investigation. Before carrying out the first endeavor in said investigation nor during the time that he intervened in same did he examine the photographs of the corpses nor the autopsy reports of Darío Rosado and Soto Arriví. He knew [what] the press published of the statements of Ortiz Molina concerning that he had been battered and that the youths who had kidnapped him were alive upon his abandoning the site of the events. He didn't try to examine the sworn statements which at the beginning of his endeavor had been given by Ortiz Molina nor the one that may have been given by the undercover agent González Malavé, notwithstanding that he knew of his direct participation in the events. **HE ALSO KNEW THAT THE PRESS ALSO MENTIONED THAT THE AUTOPSY OF SOTO ARRIVÍ SHOWED ABRASIONS ON HIS FACE, EVINCED IN THE PHOTOGRAPHS OF THE CORPSES.** (Exh. 9 SIP, pp. 102-105, 108 and 117).

Without having the preparation of the prior knowledge of his background, Atty. Miró went that same day in which he was given the task to Cerro Maravilla with the agents which the Police General Headquarters provided as being the participants in the events which ended in the deaths

of Darío Rosado and Soto Arriví. These were agents José Ríos Polanco, William Colón Berrios, Luis Reverón Martínez, Juan Bruno González and Rafael Torres Marrero. He met with these persons together with Lieutenant Jaime Quiles and in the company of *Attys. Colton and Brunet, Atty. William Rodríguez Suárez and the agent of the SIP, José Romo Matienzo at Cerro Maravilla close to noon of that day.* Those agents together with Lieutenant Quiles, and in the presence of the remainder of the persons mentioned proceeded to *recreate or simulate* the scene which to their best judgment occurred at Cerro Maravilla shortly after midday of July 25, 1978. In spite of the fact that Atty. Miró considered that Ortiz Molina constituted an [sic] 'very important' witness because he was the person that 'was in . . . the heart of the incident' (Exh. 28 SIP, p. 38), he *didn't try to obtain his intervention* in this 'recreation' of the scene of the facts. The five agents recreated the scene in *a joint manner* occupying the positions of the participants, including that of Ortiz Molina and the undercover agent; *at the same time they offered in a joint manner their version of the facts.* All this took place at the site of the facts, outside the Rikavisión structure or building and in the presence of *Attys. Colton, Miró and Brunet, Atty. Rodríguez Suárez and agent Romo Matienzo.*

Once this task of recreating the scene concluded Atty. Colton requested of the transmission technician of Rikavisión, Modesto Delgado, who was there, to allow them to enter the structure to *carry out the taking of sworn statements before Atty. Miró.* In the first instance Delgado refused explaining that he had received instructions from the Rikavisión 'management' to not let anybody in. Atty. Colton, there with the police agents and the rest of the

aforementioned group, answered: 'Good God . . . after we have defended this here for you you're going to behave in that manner.' Delgado immediately contacted one of the management officers at San Juan, who indicated to him to use his best judgment, to let them come in, *taking their names*, although without permitting the taking of photographs inside the structure. Delgado agreed to let them in under the indicated instructions. The group of persons who composed the agents entered the building providing them with a space so that *Atty. Miró could carry out the taking of the sworn statements*. While each individual was giving his sworn statement the rest of the group remained separated *within* the structure at some 23 feet, approximately. *This separation was really academic or unnecessary in view of the fact that those agents offered their version in front of the others in a joint manner in the recreation of the scene some minutes before; further, the sworn statements which were later provided consisted in putting in what had been expressed outside the structure as part of the simulation of the expressed scene.* (Exh. 11 SIP, p. 93).

In the recreation of the described scene the version of the police agents differed in *two important aspects* with the description of the facts that on July 31, 1978 had been offered by González Malavé to *Atty. Brunet*, to wit: they established that the 'halt' to the youths came from agent W. Colón Berrios who was *outside* the plant of Rikavisión; *they did not contemplate the possibility that it might have been some agent from the inside of the facilities*, placing themselves - Colón Berrios, Torres Marrero, Reverón Martínez and Bruno González - in a hidden place *outside* the plant of Rikavisión as the only agents that were waiting and faced those who arrived with the hostage. *Even if the*

sworn statement given by Ríos Polanco that he had been inside the structure with Marte Ruiz were examined isolatedly, there does not exist any possibility that the former could have been in the courtyard of Rikavisión, outside the structure. This is so since he informed in his sworn statement of the facts that upon the occurrence of the detonations he was observing Marte, suggesting that the shots produced were surprising (sic). On the other hand, from the version of González Malavé to Atty. Brunet on July 31, 1978, previously indicated, he describes that the halt was heard from inside the door of said facilities; further, the fact of having seen a person inside there. (Exh. 83 SIP, pp. 67-75). These aspects of the statement of González Malavé to Atty. Brunet established a serious discrepancy with the version of the police agents and the possibility that said agents did not respond to the truth of what happened there. In spite of the knowledge that Atty. Brunet had that these statements conflicted with what was stated by González Malavé in that regard, he didn't take any action in regards to said agents or with the other prosecutors in the quoted recreation of the scene, or at any other time, with those agents or with the prosecutors who participated in the investigation of those facts, to obtain the discovery of the truth concerning the facts under investigation through the clarification of that conflict in the evidence. (Exh. 83 SIP, pp. 70-75). He also came to have knowledge during the afternoon of August 2, 1978 at Cerro Maravilla of the presence of impact marks on the inner side of the pipes of the entrance gate to Rikavisión and the great probability that they were the result of shots had at that place on July 25, 1978. The presence of these impact marks on the gate strongly suggested the possibility that there may have been firing from the inside of Rikavisión

facilities. This circumstance, joined to the prior knowledge of the version of the facts which González Malavé offered him on July 31, 1978 which pointed to the presence of *some agent in the interior of the facilities at the time of the shooting*, increased the discrepancy had in this version with that of the agents; likewise the possibility that these might not be offering a true version of what had happened. *Notwithstanding, he did not make any attempts to resolve this serious discrepancy.*

In the version of the police agents these had placed themselves as the *only participants* of said facts, being concealed in a place outside Rikavisión in the direction of the front of the vehicle which arrived with the hostage. They informed that Colón Berrios and Torres Marrero were together carrying an AR-15 rifle and a 357 Magnum revolver, respectively, and Bruno González with Reverón Martínez in another place very close by. They stated that upon the arrival of the vehicle with the hostage, they placed themselves at the gate and upon the three youths alighting from same, Colón Berrios gave them a halt and identified himself as a policeman, Soto Arriví responding with a shot, the agents throwing themselves on the ground and answering with multiple shots which caused the deaths of Darío Rosado; Soto Arriví and the undercover agent resulting wounded, who were taken to the hospital. The former arriving dead. According to this version, the only other agent, Ríos Polanco, remained inside the building with Marte Ruiz during the shoot-out.

The taking of the aforementioned sworn statement lasted a space in time between 12:30 to 1:00 P.M. Upon the group leaving said structure and at the time that they were withdrawing, the mentioned group of persons being

in front of the exit gate, Delgado called Colton's attention to the two impacts on the entrance gate, indicating that there had been firing from inside, inquiring of him expressly if he wanted them to be 'covered up.' Atty. Colton answered to the effect that that lacked importance. There was never any reaction on the part of Attys. Brunet and Miró, present nearby, concerning this observation and Delgado's comment.

On August 8, 1978, the presence of policeman Jesús Quiñones was requested at the Police General Headquarters in San Juan, taken there on that same date by his supervisor, Sergeant Santos of the Villalba Police Station. He was informed by said supervisor that a high official of the Police General Headquarters by the name of González wanted to see him. At Headquarters, he was really taken to Major Pérez Casillas who questioned him concerning his knowledge of the events of Cerro Maravilla. The result of that dialogue with Pérez Casillas did not inspire any confidence in Quiñones and the same did not have any result.

Subsequently -on August 10, 1978- he received a telephone call at his home from Atty. Miró. Atty. Miró expressed to him that he should think about the situation of the policemen who participated in the events of Cerro Maravilla which produced the deaths of the youths Darío Rosado and Soto Arríví; he asked that he give a sworn statement of his knowledge concerning those facts. It was not possible for him to do it in view of the surgical intervention to which he would be submitted for the extraction of a sebaceous cyst on his back, as was in fact done on that same date before Dr. Freddie A. Nazario,

Lic. 4306, of Ponce. (Exh. 5 Miró). Neither did he answer after this surgical intervention concluded.

Upon the subsequent request, Quiñones appeared the morning of August 17, 1978 before Atty. Colton of the Criminal Investigation and Processing Division of the Department of Justice in San Juan. On this date, Prosecutor Nigaglioni had never subpoenaed him nor did he appear before him in any manner. In this office were present Attys. Colton, Figueroa, and William Rodríguez Suárez, the agent of the Special Investigations Bureau (SIB) José Romo Matienzo and police agent Julio César Andrades. Initially Quiñones objected as incorrect the manner in which the sworn statement was taken in regards to his knowledge of the events of Cerro Maravilla -in the presence of several persons. *It was explained to him by Atty. Colton that it was necessary to first know his knowledge concerning the facts so as to later go on to the taking of the sworn statement.* Therefore, it was continued in the manner of an interview. Among several incidents which occurred at that appearance, Quiñones clarified that he had recently presented his resignation to the Puerto Rico Police and therefore his appearance was not made in his capacity of policeman. Atty. Colton made comments to the effect that persons with his preparation could be working for him for a much higher salary -during the 13 years that he had served in the Police, Quiñones had completed his Bachelor of Science with a concentration in biology in Secondary Education and an Associate Degree in Arts with a concentration in Criminology from the Interamerican University. Atty. Colton requested at that moment an employment application, which was given by Atty. Rodríguez

Suárez to Atty. Figueroa and by him to Quiñones, who rejected it indicating that he had appeared to give a sworn statement.

The interview continued without any obstacle up to a point in which Quiñones referred to the fact of having heard two volleys of shots from firearms. Here a discrepancy arose between Atty. Colton and him concerning his certainty or the veracity with which he made that statement, Quiñones insisting that he had heard two volleys of shots coming from the Rikavisión facilities. That discrepancy did not permit the continuation of the interview and the situation reached such an extreme that Atty. Colton gave instructions that he be taken to the office of the SIB, which Rodríguez Suárez did immediately.

The Office of the SIB was located in *another building* very separated from the office of Atty. Colton of the Investigation and Criminal Processing Division. The latter was located in front of the YMCA and that within the core of Old San Juan, next to the old "Intendente Ramírez" building. In the office of the SIB Quiñones was additionally questioned by Atty. Rodríguez Suárez. The interrogatory was postponed during the lunch hour. Rodríguez Suárez took him to lunch at a restaurant in Old San Juan by the name of Palm Beach. During the afternoon the interrogatory continued and began after the taking of his sworn statement in the office of the SIB by Atty. Figueroa, with the intervention as a typist of Carmen Aledo, secretary of said office, then wife of the agent of the SIB, José Romo Matienzo, who like Atty. Rodríguez Suárez would sporadically enter the office of Atty. Figueroa where the interrogatory was developing.

In the same manner in which it occurred during the morning, the sworn statement of Quiñones developed without apparent difficulty up to his testimony of having heard two separate series or volleys of shots. The tone and environment of the interrogatory then began to vary and Atty. Figueroa to become upset with gestures of disgust on his face and the elevation of the tone of his voice. Firstly, Atty. Figueroa reacted expressing to Quiñones that he couldn't affirm with certainty that they were firearms that he heard on the second volley of shots, which Quiñones denied, reaffirming his certainty of what he was stating. A discussion arose then between these persons. The witness began to feel bad and requested permission to go to the bathroom; upon re-initiating the statement the same thing occurred. Meanwhile Atty. Figueroa dictated for the secretary to take down that Quiñones couldn't say with certainty that it was firearms that he heard on the second detonation, he insisted that he had heard 4 or 5 shots in that second volley coming from the Rikavisión facilities. This situation continued for quite a long time until Atty. Figueroa, in an upset tone expressed to Quiñones, 'Do what you please, that's your business,' at the same time that he 'threw the papers.' Quiñones then claimed that he was being pressured and that he had appeared to testify what he knew. He continued feeling bad, began to perspire and to feel chest oppression and pain 'like a sort of burning sensation' and that he was lacking air. He requested that he be permitted to call his residence in Ponce which was agreed to. At that moment Atty. Colton arrived at the office and asked Quiñones how he felt, he replying that he felt bad and explaining that, 'they want me to say things that I haven't said' and adding his desire to retire from that place. Atty Colton answered in the negative

and expressed, 'You are making us waste our time.' Atty. Rodríguez Suárez also expressed that he couldn't leave. Quiñones succeeded in contacting his wife in Ponce and explained to her what was happening. It was around 7:00 P.M. As a result of that call his wife, Betzaida Velázquez, was able to speak with Romo Matienzo of whom she requested that they should take him to a hospital. A subsequent call was awaited in which she would indicate to which hospital he should be taken, which was done after suggesting that he be taken to the Pavía Clinic in Santurce.

Because of the effect of this call Quiñones' wife also located Atty. Miguel Alvarado Santos before whom Quiñones had appeared the day before so that he would advise him legally and accompany him to the appointment in the Investigation and Criminal Processing Division. He had another appointment and it was not possible to go with him, however, he answered the request of the telephone call from the wife of Quiñones and he contacted the office of the SIB where he was located, *demanding guarantees so that his client would be in Ponce within an hour and a half.* Later a communication was received from the office of the SIB requesting an extension of time to the period demanded so that Quiñones could be returned to Ponce. Atty. Alvarado advised them that he would move to the residence of Quiñones to await his arrival.

Quiñones was taken from the office of Figueroa to the emergency room of Paviá Hospital somewhere around 8:30 P.M. The symptoms of chest pain and cold perspiration continued. His pressure was taken and it indicated 150/90; the temperature was normal. Hospitalization for

the taking of an electrocardiogram was advised but Quiñones insisted in his interest in returning to Ponce that night. He was discharged at 10:35 P.M., after signing a document of release of responsibility required by the hospital authorities. Since he had been given a medication which made it unadvisable that he drive motor vehicles, Atty. Rodríguez Suárez was able to convince him to be taken to Ponce while he [Atty. Rodríguez Suárez] drove his vehicle; Romo Matienzo followed them to Ponce to return to San Juan with Atty. Rodríguez Suárez. They arrived at the residence of Quiñones in Ponce close to midnight of that August 17th. Atty. Alvarado Santos was present upon their arrival.

Up to the moment in which the sworn statement which Jesús Quiñones was giving on August 17, was interrupted, Carmen Aledo had transcribed on the typewriter ["two or three"] pages of said statement which was being given under oath by Quiñones. She made delivery of same to Atty. Figueroa that day. Atty. Figueroa destroyed them in spite of knowing that it contained what had been stated under oath up to that moment by Jesús Quiñones. (Exh. 12 SIP, p. 177[-179]).

At about 7:00 A.M. Saturday August 26, 1978 the Atty. Colton and Figueroa, together with an employee of the SIB, Teresita García, travelled by helicopter from San Juan to the Mercedita Airport in Ponce where they were awaited by Atty. William Rodríguez Suárez and agent José Romo Matienzo, who transferred themselves together to the residence of Jesús Quiñones in the Glenview Gardens Urb. in Ponce. Teresita García was the secretary of the SIB, although she was not of Atty. Colton nor of Atty. Figueroa. (The evidence also fails to show that she was of Atty. Rodríguez Suárez nor of Romo

Matienzo). The purpose of this trip was to take another sworn statement from Jesús Quiñones.

This group of persons arrived at the residence of Quiñones at about 8:00 A.M. of that day, a time in which he and his wife had not yet gotten up out of bed. They lived at that property together with their three daughters of 6, 12 and 4 years of age at that time. *This visits had not been previously notified to the Quiñones couple and thus it was unexpected and surprising.* Upon arrival there an argument arose between Atty. Colton and Quiñones. Upon Quiñones inviting them in, together with them at the entrance gate of the residence, Atty. Colton answered that he wouldn't enter if 'you're going to get like you got over there,' referring to the situation of discrepancy which arose on August 17 at the offices of the Investigation and Criminal Processing Division of the SIB. He added, 'you're looking for me to give you an obstruction of justice or contempt charge.' Quiñones answered: 'You don't want to accept what I am saying.' Under these circumstances Quiñones felt bothered because he saw that in his own home a situation similar to what occurred in those offices on August 17 was occurring. Atty. Colton insisted in the argument expressing 'Look what it says here,' at the same time he pointed to some papers that he was carrying which he sustained expressed what Ortiz Molina had said when they were together at the Police tower on July 25, 1978. Quiñones indicated then that he would call his lawyer, which he tried to do without being able to locate him. Upon his return to the gate, his wife had already gone out of the room and was taking care of the persons. The situation prevailed. His wife expressed to them 'He already went over there to tell you the truth and you don't want to

accept it.' Finally, her intervention permitted that the group of persons come in. The impasse was resolved when the wife of Quiñones indicated to him that since they were representatives of the law to let them come in and that he would testify to them what they asked so that they could leave. She really felt fear for her husband and their daughters and therefore she urged him to let them come in. Contrary to his desire, Quiñones acceded to his wife's petition.

Teresita García had stayed in the vehicle waiting for the argument to conclude and for it to be decided whether they could come into the house. Upon the decision, she came in with a manual portable typewriter of her private property which she took there to transcribe the statement. She placed the machine on the dining room table and Atty. Figueroa proceeded to take the sworn statement from Quiñones. He had noticed two volleys of shots; he was absolutely sure that the first volley of shots came from the Rikavisión Tower since he heard them when he was climbed up at the height of the police tower looking towards those facilities in which the shots occurred. The second volley of shots he heard when he was on the ground with Ortiz Molina and although he could reasonably say that they came from the Rikavisión tower, he could not verify it with exactness; so categorically or with such absolute certainty as the first volley of detonations since he could not cast his sight in the same manner. Within that perception, to the question which was posed to him in that statement of '[h]ow many series of shots coming from the Rikavisión, Channel 7 Tower (did you) hear?', Quiñones answered '[o]ne series.' (Exh. 59 SIP).

In subsequent investigations carried out of the events at Cerro Maravilla Atty. Miró gave false statements [. . .] or

which do not respond to the truth of his actions or his knowledge, to wit:

A. Atty. Miró had knowledge of the presence of Lieutenant Quiles at Cerro Maravilla on August 2, 1978 as he so testified . . . in sworn statement of January 13, 1983 before Atty. Agustín Mangual Hernández, an investigator designated by the Department of Justice to investigate the officers and ex-officers who participated in the investigation of the events of Cerro Maravilla as well as their statements of June 29, 1983 and May 2, 1984 before the Committee on the Judiciary of the Puerto Rico Senate which carried out the investigation of those events. (Exh. 9 SIP, p. 96; Exh. 11 SIP, pp. 80, 93 & 94). However, in the sworn statement which he gave on December 5, 1980 before Atty. Villanueva designated as investigating prosecutor of the events of Cerro Maravilla, after he was asked if he knew Lieutenant Quiles and having answered in the affirmative he was additionally asked if he remembered having seen him on August 2, 1978 at the site, to which he answered: 'Negative. I did not see him.' The following question was: 'Tell me when was it that you saw him?', [he] answered 'I saw him for the first time at a P.H. of facts occurred at the University of Puerto Rico in the home of the Honorable Ex-Governor of Puerto Rico Luis Muñoz Marín.' (Exh. 27 SIP, p. 3).

B. The sworn statements of the five police agents were taken by Atty. Miró *within the structure of Rikavisión* on August 2, 1978 and in *stenographic notes* by the secretary Ana Celia Cintrón Lema. At his appearance at the Senate Committee on the Judiciary on June 29, 1983 and upon questions of Atty. Rivera Cruz he testified

under oath that said statements were taken by *typewriter*. (Exh. 9 SIP, pp. 102-105).

On the day following having given the aforementioned statement before the Senate Committee on the Judiciary Atty. Miró called Ana Celia Cintrón Lema on the phone at the office of the Arecibo District Attorneys' office where she was working; and made reference to his appearance the previous day before said commission and of having testified that the sworn statements given by the five agents on August 2, 1978 at the Rikavisión structure were taken by typewriter. He stated, 'Maybe they are going to subpoena you; so that you'll say that we went with a typewriter.' Ana Celia Cintrón Lema answered that she could not please him since those statements were taken with stenographic symbols. Atty. Miró insisted in that she do so, so that things would 'match.' There was another negation on her part. Several days later Ana Celia Cintrón Lema informed what happened concerning this phone call to Atty. Brunet and at her insistence she gave a sworn statement before Prosecutor Félix Daniel Torres indicating what had happened.

In a sworn statement given subsequently before Atty. Rivera Cruz on November 3, 1983, Atty. Miró set out that the answer that Ana Celia Cintrón Lema gave him he clarified a doubt which he had concerning that he understood that the sworn statements given by the five agents were taken by typewriter. (Exh. 40 SIP, p. 5).

C. Atty. Miró testified under oath before the Senate Committee on the Judiciary in his testimony of June 29, 1983 that the Attys. Colton and Brunet were outside

the structure of Rikavisión while he carried out the interrogatory of the five police agents -(Exh. 9 SIP, p. 100 and 102; Exh. [2]8 SIP, p. 18; Exh. 11 SIP, pp. 85-86)- when the truth was that while the five agents were being interrogated for the taking of their sworn statements, Attys. Colton and Brunet were inside that structure.

D. As part of the aforementioned investigative work which Atty. Miró was performing, he went to Jayuya on August 10, 1978 to take a sworn statement from Dr. José Ramos Rivera who intervened in the receipt of the corpse of Carlos Soto Arriví on July 25, 1978. In his testimony under oath before the Senate Committee on the Judiciary and upon questions of Senator Rolando Silva on June 29, 1983, Atty. Miró related as follows part of the testimony which according to him was given by Dr. José Ramos Rivera in the sworn statement which he took on August 10, 1978 in the Jayuya Police Station:

'ATTY. MIRO: I asked him also, if this person had any external blows which could be noticed. He said no, that those blows are the ones a person presents when he is hit be a firearm or when he falls, something along that nature, but blows that they looked as if they were caused by another instrument or with a fist or with, no, he didn't have that evidence . . .

HON. SILVA: that is, doctor in Jayuya, clearly tells you that the corpse that he examines does not have blunt blows.

ATTY. MIRO: That is so.' (Exh. 9 SIP, pp. 137 & 138)

On the other end of the aforementioned sworn statement Atty. Miró expressed upon questions from Senator Santiago:

'I asked him if these persons had any other external blow which could be noticed, and he told me that those that were current and normal, that a person when they are shot, well, the blow that can be received upon falling and those things, but blunt blows which were not a result of those shots, he told me that he did not have any.' (Exh. 9 SIP, p. 160)

However, in relation to the foregoing, *the only question which was really posed* by Atty. Miró to Dr. Ramos Rivera in the statement which he gave at Jayuya on August 10, 1978 concerning the possible cause which originated the contusions and lacerations which the corpse of Soto Arriví presented, had an answer which does not respond to the one given before the Committee on the Judiciary as has been set out. See, the question and answer which appears from the statement of Dr. Ramos Rivera, at page 2, question number five, in descending order -(Exh. 71 SIP, p. 2):

'Q. Witness with the experience that you have as a physician, I ask you if the marks which he had on the forehead, the contusions and lacerations, could have been caused by this person falling forward or may have been caused by another person with some foreign body such as a shoe or boot or the butt of a weapon.

'A. This question has to be answered by an anatomopathologist.'

In order to take the aforementioned sworn statement of Dr. Ramos Rivera in Jayuya on August 10, 1978 Atty. Miró went from San Juan to that place in an official vehicle of the Puerto Rico Police, driven by a police agent. There Atty. Miró requested of Dr. Ramos Rivera that in view of the fact that there was no available space in said hospital, he accompany him to the police station to take this sworn statement. The mentioned physician agreed and went with Atty. Miró on foot to the police station some 4 minutes away from the hospital. While said statement was being taken, only Dr. Ramos Rivera, an employee of the police station who served as a typist and Atty. Miró who questioned him were present; with the exception of the agent who drove him to Jayuya who came in and out of the room while the statement was being taken, without orally intervening with same.

The week after August 2, 1978 Atty. Miró was informed by Prosecutor Nigaglioni that Julio Ortíz Molina was in the process of filing a complaint against the State for the facts which occurred at Cerro Maravilla. In view of this he considered calling Atty. Colton so that he give instructions in that regard, which he did informing him of the situation. When Atty. Colton answered him 'don't touch him,' he decided not to intervene nor take a sworn statement from Julio Ortíz Molina. (Exh. 11 SIP, pp. 49-52). This was so notwithstanding that Atty. Miró knew that Ortíz Molina was a witness of great importance in the investigation which was being carried out. (Exh. 28 SIP, p. 38).

Miguel Marte Ruiz gave a sworn statement before Prosecutor Nigaglioni on July 26, 1978 concerning his

knowledge of the events of July 25, 1978 at Cerro Maravilla. Subsequently he gave other sworn statements in several forums, including his testimonies before the Senate Committee on the Judiciary in 1983. During all this time he had been under the surveillance and control of the Intelligence Division of the Ponce police in relation to his different appearances and testimonies. According to instructions from said division, particularly from Lieutenant Roberto Santiago Cartagena, who had directed it, *Marte Ruiz has been obliged to keep same informed of his statements in the different forums.* He has had to appear and verbally inform to that effect in each occasion in which he has testified, communicating for that purpose with Lieutenant Santiago Cartagena and agent Nazario Mateo Espada. Likewise, every time he has had the opportunity to appear to give statements he has been transported and accompanied by different agents of the Intelligence Division of the Ponce police.

On August 3, 1978, Atty. Figueroa issued a subpoena directed at Marte requiring his appearance before him at 5:00 P.M. of that same date, at the office of Prosecutor Colton of the Division of Investigation and Criminal Processing located at Stop 1, in front of the YMCA at San Juan. This subpoena was personally notified to Marte Ruiz that morning through an agent of the Intelligence Division of Ponce, Félix Santiago. This agent drove Marte from Ponce to the office of Atty. Colton in San Juan on the morning of August 3. He expressed to him that although the subpoena was for 5:00 P.M. he had to appear to deliver certain evidence to the office of the Special Investigations Bureau so that he would take the opportunity to drive

him during the morning and thereby move up his appearance at the office of Atty. Colton.

After agent Santiago delivered said evidence to the Special Investigations Bureau, he drove Marte Ruiz that morning to the office of Atty. Colton. In that office there was just Atty. Colton and another prosecutor whose identity Marte could not recall with precision. However, his physical description, as described by him, discards that it might have been Atty. Miró. In addition there was present the stenographer Ana Celia Cintrón Lema.

(In the evaluation of this part of the evidence the Commissioner has examined with extreme care all the related evidence, which includes the testimony in court by Marte, that of Ana Celia Cintrón Lema and of the other witnesses as well as the documentary evidence admitted into evidence in any way associated with this aspect. In several parts of his testimony Marte referred to the other prosecutor as Atty. Figueroa, a respondent in this case, without hiding his insecurity concerning his precise recollection of his face. Finally, at the end of his testimony, without evidence of other effect or spirit that his lack of recollection, the Commissioner merely states that he had doubts that that other prosecutor who accompanied Atty. Colton on that day might be Atty. Figueroa. Notwithstanding, during his testimony he assured, without any doubt, that *Atty. Colton acted with that other prosecutor.* On the other hand, Ana Celia Cintrón Lema, independently of having expressed in her testimony in court not remembering any relevant aspects of this part of the evidence she assured her recollection of having seen Marte with Atty. Colton at an interview in his office, the evidence does not show that Marte went on any other

occasion to said office or to any other dependency of the Department of Justice around that date. We note that the evidence received, whose related conclusions we will complete further on, *has produced a certainty and conviction that Atty. Colton was one of the two prosecutors who was found and intervened in said office in the questioning of Marte.* We also have similar certainty that it was not Atty. Miró who intervened with Atty. Colton in that interrogatory and statement, in spite of the fact that his name appears as the prosecutor before whom, on the date of August 4, 1978, Marte gave a sworn statement which was produced on that occasion. (Exh. 46 SIP). On the other hand, the doubt finally expressed by Marte himself, *does not allow us to conclude that Atty. Figueroa was the other prosecutor who accompanied Atty. Colton in that endeavor.*

In said office on August 3, 1978, Marte was the object of an interrogatory product of the intervention of both aforementioned prosecutors. The same developed in such a manner that the different answers that Marte offered to the questions that were posed to him by the prosecutor who accompanied Atty. Colton were several times questioned by both prosecutors, who, after consulting among themselves dictated the answers to the stenographer, making their criteria or conclusions prevail over what constituted the answers given by Marte. The manner of questioning followed like a pattern of instruction to the stenographer so that she would 'hold up' when the answer was in doubt; she waited while Atty. Colton and the other prosecutor spoke among themselves and then they would dictate what was going to be the answer on those points of the interrogatory which were questioned. For example, on one occasion Marte told them of having heard two volleys of shots at Cerro Maravilla and Atty. Colton answered, 'No, that can't be, it was

just one.'; likewise, upon being questioned whether there had been more than one shoot-out what he heard, he answered in the affirmative. This answer was altered at the insistence of Atty. Colton who determined 'whether is was copied or not,' that is, if it should or not form part of the statement. Upon asking him if he saw that anyone was hit, he stated having seen a tall skinny person kick the corpse, to which Atty. Colton answered that that prejudiced the Police of Puerto Rico. Likewise, Atty. Colton wanted to make him see that the youth who has been identified there as weeping and being beaten was an agent. Another manner utilized by Atty. Colton to question the answers which the witness offered consisted in rejecting them because he considered them 'too strong' and that they affected everybody.

In another incident which arose in that appearance of Marte at said office, he communicated to Atty. Colton the approach which was made to him in Ponce by a representative of the Labor Union UTIER to interview him concerning his knowledge of the events of Cerro Maravilla. Atty. Colton answered him indicating to him that he should inform him who that person was 'to put him out of circulation.' That statement worried Marte and filled him with fear for his own life and that of his relatives.

(Closely related to the part of the evidence previously indicted in which we determined that it was not Atty. Miró the other prosecutor who intervened together with Atty. Colton in the interrogatory of Marte on August 3, 1978, is the other one on which we must determine what participation, if any, as a matter of fact, is attributable to Atty. Miró in the taking of the sworn statement from Marte on that occasion in view of what Exhibit 46 of the SIP reports consisting in a transcript of the stenographic notes of the

sworn statement which was given at same by Marte, dated August 4, 1978 and *under the heading of prosecutor Miró*. For the evaluation of this aspect of the evidence we have seen to, in addition to the evidence already pointed out in the preceding conclusion, that which results from the documentary evidence which will be set out further on as an integral part of the conclusion which we shall reach.)

Ana Celia Cintrón Lema, commonly known as 'Toñita' among her fellow workers, is an employee of 24 years of service in the Government of Puerto Rico. As of the date of the events of Cerro Maravilla, she was working as the secretary to Atty. Brunet in the Department of Justice. Her name appears as the transcriber of fourteen of the sixteen sworn statements which are reported to have been taken by Atty. Miró, to wit: those given on August 2, 1978 at the Rikavisión facilities at Cerro Maravilla by agents José Ríos Polanco, Rafael Torres Marrero, Juan Bruno González, Luis Reverón Martínez and William Colón Berrios (Exh. 31 SIP); the statement of Miguel Marte Ruiz which is the object of our present examination and which appears as given before Atty. Miró with the date of August 4, 1978 (Exh. 46 SIP); which are reported as having been given on August 7, 1978 by agents Carmelo Cruz, Rafael Moreno, Eugenio Ríos Santiago, Angel Luis Pérez Casillas and Miguel Cartagena Flores (Exh. 18, SIP); those of Emilio Rodríguez Esteban and Tomás de Jesus Mangual of August 8, 1978 (Exh. 80 SIP); and finally, that of Agent Carlos Rivera Falú of August 16, 1978 (Exh. 85 SIP). Ana Celia Cintrón Lema did not intervene as stenographer in the two remaining statements which are reported to have been given before Atty.

Miró of Dr. José Ramos Rivera and agent Francisco Santiago Guzmán on the 10th and 14th of August, 1978, respectively. (Exh. 71 & 84 SIP).

Of the 16 sworn statements previously related which appear having been given before Atty. Miró, *in the one that refers to the one given by Marle Ruiz before him on August 4, 1978 (Exh. 46 SIP) he had no intervention in same since it was really given before Atty. Colton and another prosecutor the day before in his office at the Investigation and Criminal Processing Division in the manner described.* With relation to this sworn statement Atty. Colton specifically instructed Ana Celia Cintrón Lema so that in the certification of the transcript [sic] of her stenographic notes of same not to include him as having been the one who was taking it or was given in his presence. According to the testimony of Ana Celia Cintrón Lema in Court, the following was the instruction that she literally received from Atty. Colton: 'Toñita, when you go to transcribe don't put my name there.' The document which contained said sworn statement does not appear signed by the testifying witness, by the prosecutors who intervened in same nor by Atty. Miró and that instruction of Atty. Colton referred to her excluding his name from the heading ('heading') of the document, so that same would not show that the statement was given in his presence. Said stenographer proceeded to act according to the given instruction.

(There was on the part of Ana Celia Cintrón Lema in her testimony in court a manifestation and evident inclination and purpose of not expressing to the Commissioner the result of her best recollection concerning the other details related with the quoted instruction which she received from Atty. Colton so that his name would

not appear on the document. She acted in a similar manner as she had done in relation to the details of the interrogatory of Marte when the evidence was presented to identify the person of the other prosecutor who acted jointly with Atty. Colton. In this incident which we now deal with, she insistently affirms not remembering in relation to which of the statements the instruction given by Atty. Colton already indicated applied; limiting herself to maintaining her statement of it having occurred in relation to one in which she participated which appears as having been given before Atty. Miró. *She admits her preference that a favorable decision be produced for the respondents for reasons of friendship and camaraderie in relation to them.* She was confronted by the SIP to classify that action of Atty. Colton in comparison with the so called telephone call made to her by Atty. Miró so that she would adjust her testimony before the Committee on the Judiciary informing that the statements taken in the Rikavisión facilities were transcribed by typewriter instead of being taken by stenographic notes. Firstly she expressed that she did not see in the action of Atty. Miró a petition for her to lie, instead that she interpreted it as a help that he was asking of her. *Upon the insistence of the SIP she admitted that with the expressed action Atty. Miró was asking her to lie;* however, she persisted in her estimation that it was not a requirement for the expression of a lie what was contained in the aforementioned instruction of Atty. Colton).

(The SIP insisted in this witness that she make an effort and try to be precise as to which of the statements Atty. Colton referred to in his request. In view of the consistent affirmation that she did not remember, the

prosecutor again insisted bringing to the attention of the witness a detailed relation to each one of the sworn statements which appear as presented before Atty. Miró in relation to the events of Cerro Maravilla in which she was the transcriber. In one manifest and clear attitude of *lack of cooperation* in what was requested of her, said witness *repeated in a continuous and very unusual manner the absence of her recollection to the point of answering the question before it was posed without evidence of reflection of any kind or of a good attitude or spirit of trying to make a minimum effort to bring to her memory the fact she was being questioned about. In the judgment of the Special Commissioner, her effort to not recall was manifest*).

(The evidence showed that the independent efforts made to locate the notebook used by Ana Celia Cintrón Lema in the transcript of her stenographic notes of the aforementioned interview or interrogatory of Marte Ruiz in the Department of Justice. The answer by Atty. Pierre Vivoni, Interim Chief of the Investigation and Criminal Processing Division of the Department of Justice, to Atty. Héctor Rivera Cruz on November 15, 1983 refers to the search made in said division to locate the stenography notebooks related to the Cerro Maravilla case related to the stenographer Ana Celia Cintrón Lema. This search included the old building of the Criminal Division (as it is commonly known) and two warehouses that the Department of Justice has in Buchanan. Atty. Vivoni informed that as a result of that endeavor 'no notebook of any kind' was found of the 'stenographic notebooks related with the Cerro Maravilla case, with regards to the stenographer Celia Cintrón.' (Exh. 14 SIP).

(During his intervention in the investigation of the events of Cerro Maravilla *Atty. Miró did not see other statements other than the ones he took*; whether they had been taken before or after August 2, 1978 (Exh. 9 SIP, pp. 117-118). Likewise, during his investigation he never saw photographs of the corpses of the youths who died at Cerro Maravilla nor any other photo related with the facts of these deaths, with the sole exception of some photos which were shown to him by the reporter of El Vocero, Tomás de Jesús Mangual, of Julio Ortíz Molina and his vehicle on August 14, 1978. (Exh. 27 SIP, p. 4; Exh. [11] SIP, pp. 109 [-110]). In contrast with this, appears the sworn statement as given by Marte on August 4, 1978 before *Atty. Miró* (Exh. 46 SIP), in which questioning included the presentation to him of a copy of the sworn statement which he gave on July 26, 1978 before Prosecutor Nigaglioni; likewise the reference to specific portions of said statement. The aforementioned examination of Marte also included the presentation to him of a *photograph of one of the corpses* -presumably, that of Arnaldo Darío Rosado in view of the fact that it refers to the *mask with this one*. Therefore, it could not have been *Atty. Miró* the prosecutor who intervened in the sworn statement presented by Marte on August 3, 1978 since his not having seen the sworn statement which he gave before Prosecutor Nigaglioni on July 25, 1978 nor any photographs of the corpses of Darío Rosado and Soto Arriví, it was not him, as it could not have been him, who shown Marte copy of the statement given before Prosecutor Nigaglioni nor did he refer portions of same, conditions of fact which accompany the act of the aforementioned statement given by Marte. In these circumstances the only

indication of his name in the heading of the document which contains it, (Exh. 46 SIP) the only evidence that the same was given before him, is insufficient for us to conclude that said statement was given before Atty. Miró).

(In addition, in the evaluation of this aspect of the evidence, from the totality of the sworn statements which appear taken by Atty. Miró, it is necessary to exclude the five which were given at the Rikavisión facilities at Cerro Maravilla which were unquestionably taken before him; likewise the ones given by Dr. José Ramos Rivera at Jayuya and agent Francisco Santiago Guzmán in which Ana Celia Cintrón Lema did not intervene as a transcriber, recipient of the instructions given by Atty. Colton. The evidence does not show that there exists in the seven remaining statements the indication of any fact or factor which may suggest that any of them could be the object of the request for instruction indicated by Atty. Colton to Ana Celia Cintrón Lema.)

In the visit that the prosecutors and agents of the SIB and police agents made to Cerro Maravilla on August 2, 1978, José Romo Matienzo took around 200 photographs of the different places of the facilities of Rikavisión and its adjacent area. He took them at the request of his immediate supervisor Atty. Rodríguez Suárez, through consultation with him and under his entire discretion. Atty. Rodríguez Suárez was informed that day by the Rikavisión Technician Modesto Delgado of several traces or marks of impacts which the Volkswagen vehicle property of said firm which was parked in the courtyard of same, in the interior part of the gate or the fence, received during the shoot-out of July 25, 1978. Likewise, he brought to their attention the marks or traces of impacts

on the pipes of the entrance gate, which was closed at the time of the shoot-out. He informed them of the circumstances that those marks were not there previously prior to those events, instead that they appeared after the shoot-out. The form of same and the points or places in which they were pointed out to a strong probability that it was the product of bullet impacts from the shoot-out which occurred there on July 25, 1978 of shots coming from the interior part of the Rikavisión facilities, that is, the courtyard or the interior of the building. According to that information and the instruction from Atty. Rodríguez Suárez so that those objects be photographed, Romo Matienzo took photographs of the Volkswagen vehicle as well as of the pipes on the entrance gate where the marks compatible with bullet impacts appeared in plain view. (Exh. 33 and 34 SIP).

Attys. Miró and Brunet found on August 2, 1978 on the ground in front of the gate of Rikavisión, four pistol shells given by the latter to Atty. Rodríguez Suárez so that he proceed in conformity with the investigation he was carrying out. (Exh. 27 SIP, p. 3). Next to the gates there was also found on that date a 38 caliber revolver shell. Further, Atty. Rodríguez Suárez received during the course of his investigation, from Marte Ruiz from 12 to 15 shells of long weapons which he found within the fence or the courtyard of Rikavisión in other places of those facilities. Atty. Rodríguez Suárez collected as additional evidence from the investigation other evidence received from the agent from the Intelligence Division of Ponce, Félix Santiago Guzmán: several belongings of the youths killed at Cerro Maravilla, boots of Darío Rosado, a mask,

a bloody trouser with dirt marks on the knees with evidence of sand and earth, underwear and the shoes (sneakers) of Soto Arriví.

As part of his duties of being in charge of the accumulation of the evidence Atty. Rodríguez Suárez and agent Romo Matienzo gave knowledge of the evidence received and accumulated to Atty. Figueroa, who as Director of the Special Investigations Bureau, it was up to him to order the analysis of the evidence. It was Atty. Colton's job to do the same for the Investigation and Criminal Processing Division. Atty. Rodríguez Suárez and agent Romo Matienzo had experience in the field of criminal investigation. Atty. Rodríguez Suárez came from the former Special Investigations Division which was substituted by SIB; he was already an attorney admitted to practice. Romo Matienzo had four years of experience in criminal investigation, had been in the Army of the United States of North America and participated in a seminar of the Secret Service in the United States. As to the date of the hearing of this process, he was already an attorney admitted into practice, a career which he completed as of the date of the facts of this case. Both officials informed Atty. Figueroa the result of the evidence accumulated in their intervention of the investigation so that he would order the corresponding analysis. To this effect they showed him from same, among others, the proof of the photographs indicating the impacts on the Volkswagen vehicle and the entrance gate of Rikavisión. They expressed further the information received from technician, Modesto Delgado, to the effect that those marks of impacts were not present on the Volkswagen nor on the entrance gate of Rikavisión prior to the shoot-out which occurred at said facilities on July

25, 1978, instead that they were noticed for the first time after same. Together with this evidence there was in view of the knowledge of Atty. Figueroa the proof of the shells that had been found in the interior of the fence or courtyard and the gate of Rikavisión. All this evidence, particularly because of the circumstances of the position in which the Volkswagen was found, the place of the marks of the impacts and the nature of these on the vehicle as well as on the pipes of the gate, the time in which these marks appeared, the place in which the long arm shells appeared, together with the evidence that they already had of the bullet impacts received by the vehicle of Ortiz Molina in the shoot-out, tended to point out that shooting had been had from within the gate of Rikavisión, whether it was from the courtyard or from the interior of the building. However, Atty. Figueroa considered unnecessary to submit these to analysis under the premise that it could not be determined that those impacts occurred at the time of the events. For this reason, no analysis of any type was performed in relation to the marks or indications of impacts on the Volkswagen nor on the gates. Nor does it appear that any reason was proffered for not having done so.

The performance of the analyses or the necessary ballistics test to determine the presence of marks or bullet impacts on said vehicle and gate and in the case of this testing having been done, the determination of the direction or origin of the shots from the weapons and possibly of the agents who performed them, would have with great probability produced a new version of the manner in which the facts occurred which produced the deaths of the youths Dario Rosado and Soto Arriví at Cerro Maravilla on July 25, 1978;

version which would have decreased the value of that of the police agents contained in the sworn statements of five of them given on August 2, 1978 before Atty. Miró and which discarded absolutely that there had been shots from the interior of the gates; or the fence of Rikavisión or even that there could have been an agent posted in said interior. *All this effect would have been presented the necessity of investigating with greater consideration and depth the version of those eyewitnesses to those facts who supported having taken place the detention of the youths after a first volley of shots, their aggression, the presence of a second volley of shots together with the deaths and the aggression to one of the corpses.* The realization of these tests constitutes an aspect of great importance in the investigation of said events and with the omission of carrying them out left unresolved a relevant part of the investigation which was being carried out.

Nor was any analysis of any kind made of the 38 caliber revolver shell found next to one of the gates. Through such measures it would have been possible to make the important determination of to which of the weapons that the agents who intervened in the Cerro Maravilla operation it belonged. Atty. Colton, on the other hand, expressed concerning the failure to order the analysis of said shell: 'It's possible that I may have missed that' in response to questions of Atty. Rivera Cruz in his appearance under oath before the Senate Committee on the Judiciary on June 16, 1983 (Exh. 65 SIP, pp. 150-151).

Likewise the pants of one of the dead youths which was received full of blood and dirt at the level of the knees with evidence of sand and earth; the mask, the

boots of Darío Rosado, the underwear and shoes ('sneakers') of Soto Arriví.

By not submitting the mask to laboratory analysis it was not possible to determine the presence of blood on same, in spite of the extreme importance that that information would have brought to the investigation of those events in view of the version given by the police agents that Darío Rosado had a mask on at the time of the shoot-out when he fell dead. Due to the close relation between the condition in which the face of the corpse of Darío Rosado was observed, which showed the presence of a great profusion of blood, and the versions of the eye witnesses of the fact of the existence of a physical aggression on the part of the agents up on the youths while they were detained and subsequently to the corpses, the absence of blood in said mask could have represented a fact incompatible with the version of the police agents of how that death occurred.

This fact would have meant a fundamental change in the course of said investigation and possibly decreased the value of the police agent's version concerning the manner in which the death of Darío Rosado occurred which contemplated very probably the soaking of the mask in blood at the time of causing death. Therefore, in suppressing the performance of said analyses the search for an angle of vital importance to said investigation was not performed.

Attys. Colton and Figueroa also had knowledge on the marks or signs of impact on the left lateral side of the public vehicle of Julio Ortiz Molina as a result of the shoot-out. In view of the position in which that vehicle was found in relation to the gates, the courtyard and the Rikavisión structure at the time same occurred, the analysis of said

impacts would have had a relation to the investigation that was being carried out similar effects to the cases previously mentioned of the marks or signs on the Volkswagen vehicle and on the pipes of the entrance gate, that is, presented the probability that there might have been shooting from inside Rikavisión, a fact completely incompatible with the version of the five police agents of how said incident occurred. *In spite of this knowledge, Attys. Colton and Figueroa opted for not making any effort to recuperate said vehicle to carry out the corresponding analyses of same which might possibly determine the direction and origin of the bullet impacts, the types of weapons used in relation to those impacts and the agents who made the shots which caused them.* Atty. Figueroa rested his decision of not carrying out that endeavor on the vehicle having been returned to Ortiz Molina, he understood that it was not 'compatible' to recuperate it for the realization of said analyses; and he further alleged the hostility shown by Ortiz Molina and that the determination of doing so was going to depend on the testimony and photographs. (Exh. 6 Figueroa, pp. 1[47]-14[8]; Exh. 12 SIP, p. 135). Atty. Colton, on his part, based his decision of not ordering said vehicle to be analyzed on that the evidence indicated that no shooting had occurred from the interior of Rikavisión – for this he relied essentially on the statement of Marte Ruiz – likewise, in his opinion that had anyone fired from the inside, 'they would have perforated that vehicle from top to bottom.' (Exh. 65 SIP, p. 14[5]).

In the investigation performed of the events of Cerro Maravilla by Attys. Colton, Figueroa and Villanueva they had knowledge of sufficient evidence to delve deeper into same because of the possibility that the youths Darío Rosado and

Soto Arriví had been detained, unarmed and physically assaulted by the police agents who intervened in the volleys of shots or shoot-out which began upon their arrival at the Rikavisión facilities at about 12:30 P.M. on July 25, 1978; they had knowledge, also, of sufficient evidence to delve deeper in said investigation into the additional possibility that a second volley of shots may have been produced after which the deaths may have been caused while they were detained and finally that the corpse of one of those youths was physically attacked. However, they omitted to consider that evidence and delve deeper in their investigation and likewise indicated it in the reports submitted:

Atty. Colton had direct knowledge of the possibility that said youths were detained and subsequently assaulted and that a second volley of shots linked to their deaths occurred through the testimony of Ortiz Molina on the occasion of the sworn statement given by him before Prosecutor Nigaglioni on July 31, 1978 in which Atty. Colton intervened; of Marte Ruiz in his testimony of the interview of the sworn statement given August 3, 1978 in which he also intervened. He had information about both aspects by the effect of the statement of Ortiz Molina before Atty. Julio Alvarado Ginorio on July 28, 1978 (Exh. 7 SIP). Independently he obtained knowledge of the existence of a second volley of shots which was testified to by policeman Quiñones on the occasion of his statement of August 17, 1978 before Atty. Figueroa, in which interrogatory Atty. Colton also participated. From the statement given by Marte Ruiz on August 3, 1978 Atty. Colton also knew the version of his having seen the corpse of one of the youths being kicked. In addition to the testimonial evidence quoted, the evidence of the photographs of the corpses of said

youths (Exh. 32(a), (b) and (c) and 70(a) and (b) SIP) offered similar information of possible physical aggressions to those youths.

Atty. Figueroa on his part *had knowledge* as part of the preparation of the joint report submitted with Atty. Colton of the statement of Ortiz Molina before Atty. Alvarado Ginorio on July 28, 1978 concerning the detention of the youths and their possible aggression as well as the possible existence of a second volley of shots. *As part of the preparation of the report of the investigation submitted he also had knowledge of the photos of the corpses and of the possible aggression of said youths while they were detained.* By the effect of the intervention in the aforementioned sworn statements which Jesus Quiñones gave on the 17th and 26th of August, 1978, he also knew of the *possibility* of a second volley of shots.

In addition, Attys. Colton and Figueroa *knew* of versions which established the presence of a second volley of shots through the testimony of Nelson Rivera Torres and Norma I. Cintrón de Rivera according to the statements given by them on August 23, 1978 before Atty. William Rodríguez Suárez (Exh. 29(c) and (b) Figueroa[, respectively]). The statements of these two persons *do not* make any mention of a prolonged volley and of many shots which arises out of the general context of the sworn statements of the five police agents who testified having participated in the shoot-out (From the general context of the sworn statements of the agents who participated in the shoot-out, the occurrence of many shots arises: Ríos Polanco informs having heard around 20 shots; the others referred to an 'exchange of shots' and 'shoot-out'). (Exh. 31(a), (b), (c), (d) and (e)). The Rivera couple refer to the

fact of having heard only from four to five shots between 12:30 to 1:00 P.M. on July 25, 1978 near the Rikavisión facilities. They expressed having heard a group of shots which results *compatible only* with the description of Ortiz Molina, Jesús Quiñones and Marte Ruiz of the second volley of shots. In view of the fact that from their statements no fact arises which may reasonably suggest that there may have been any other volley of shots, Nelson Rivera Torres and Norma I. Cintrón de Rivera or any of them individually, would have heard it because they were around that place close to that time or for some other reason, their versions of having heard four or five detonations only *represented to Attys. Colton and Figueroa the corroboration of the possible existence of a second volley of shots in harmony with the version of Ortiz Molina, Quiñones and Marte Ruiz.*

Atty. Villanueva, on the other hand, received information of the possible existence of physical aggression on the youths while they were detained through what was testified under oath by Ortiz Molina before him on October 21, 1980. (Exh. 13 SIP). He also received information of the possibility that an aggression occurred by means of the testimony before him of Jesús Quiñones on November 21, 1980 (Exh. 60 SIP) and Julio César Andrades of October 23, 1980 (Exh. 23 SIP). Likewise from the examination of the statement of Ortiz Molina before Atty. Alvarado Ginorio of July 28, 1978 and from the information of lacerations and abrasions compatible with the receipt of blunt blows which arises from the photos of the corpses of Darío Rosado and Soto Arriví (Exh. 32 (a), (b) and (c) and 70(a) and (b) SIP); these photos provided additional knowledge to Atty. Villanueva of the possible aggression on the corpses of the youths.

Of the possibility that a *second volley* of shots may have occurred Atty. Villanueva *obtained knowledge* through the statement before him of Ortiz Molina on October 21, 1980 (Exh. 13 SIP), Jesus Quiñones on November 21, 1980 (Exh. 60 SIP), Julio César Andrade on October 23, 1980 (Exh. 23 SIP), Adolfo Flores on December 15, 1980 (Exh. 41 SIP) and Ismael Ruiz Vázquez on October 23, 1980 (Exh. 62 SIP). Atty. Villanueva *also had knowledge* which indicated the possibility that a *second volley* of shots may have occurred at Cerro Maravilla through the statement of Ortiz Molina on July 28, 1978 before Atty. Alvarado Ginorio (Exh. 7 SIP) and that of the couple Nelson Rivera Torres and Norma I. Cintrón de Torres before Atty. William Rodríguez Suárez on August 23, 1978 as has been explained (Exh. 29(c) and (b) Figueroa).

(In evaluating the evidence related with the performance of Atty. Miró to resolve if this describes, as a matter of fact, the conduct which one of the charges makes against him concerning the manner in which he is alleged to have taken the sworn statements of police agents Cartagena Flores, Ríos Santiago, Pérez Casillas and Moreno Morales on August 7, 1978, or if it describes another type of performance, *we have considered the circumstances of the other prevalent facts at the time that these statements were given*: The actions of the agents who participated in Cerro Maravilla on July 25, was being *questioned as of that date*, in keeping with the statement of Ortiz Molina who pointed out the detention of the youths, the aggression against these, and the existence of a *second volley* of shots linked to their deaths and that one of the youths was hand-cuffed. González Malavé had

given a sworn statement on July 31, 1978. Atty. Miró had full knowledge of the versions of the facts as set out by other agents in a recreation of the scene and subsequent sworn statements before him at Cerro Maravilla on August 2, 1978 and of the circumstances already described in which they were produced; that in his version these expressed the existence of just one shoot-out, and denied the fact of the detention and the aggression of the youths subsequent to the shoot-out Atty. Miró still ignored, by his lack of preparation in the case, the contents of the sworn statements given concerning those facts by Ortiz Molina and González Malavé. Within this framework of facts, in the evaluation of this evidence, we have concentrated our appreciation in the determination of the existence or nonexistence of a fiscalizing attitude on behalf of Atty. Miró in the interrogatory of those agents aimed at obtaining the spontaneous expression of these to discover their knowledge concerning the facts).

In his investigation of the facts, Atty. Miró took the sworn statements of the agents of the Intelligence Division Rafael Moreno Morales, Eugene Ríos Santiago, Miguel Cartagena Flores and Major Pérez Casillas on August 7, 1978 (Exh. 18 SIP) demonstrating great superficiality, insubstantiality, and neglect as a means for trying to obtain the search for the truth concerning how the facts occurred in the events at Cerro Maravilla. These sworn statements highlight only a highly suggestive intervention by Atty. Miró, primarily in the investigation of whether one volley of shots took place at Cerro Maravilla, if the youths were hand-cuffed and if there was aggression against these. Because of it there is a total absence of spontaneity in those aspects by those agents; and the

development of an interrogatory, which because of its highly suggestive nature in those aspects, clearly tended to maintain the version of the facts of those other police agents who gave statements on August 2, 1978. (Exh. 18 SIP).

This manner of interrogating said agents constituted further an inconsequent and casual exercise as a resource utilized by Atty. Miró in the search for the truth concerning what happened at Cerro Maravilla. So it is shown by what happened during same in the deposition of Atty. Miró taken before the Special Independent Prosecutor on February 24, 1986 (Exh. 10 SIP):

'ATTY. RAMOS:

Q. What's wrong with that one, colleague?

A. I don't remember this man . . . That is, the name is not, that is . . . probably I took it, look, probably I took it, I am not saying that I have not taken it, probably I took it, but the name, that name, Miguel Cartagena is not in my memory as one of the persons from whom I took a sworn statement, I probably took it.

Q. And the content of the statement, have you been able to verify if it is a content that you remember that someone stated it to you?

A. It's that . . . it's that practically the content of almost all these statements more or less has a . . . more or less has a similarity, if you will . . . ' (p. 138)

'Q. . . Why do you have doubt if you took it or did not take it?

A. That is the problem with this is that Major Pérez Casillas, I recall having . . . having interviewed him in the Division, but I'm not clear, clear, very clear, if the statement, if I took the statement that same day that I did interview him or if I didn't take the statement . . . and . . . well they introduced him to me as Major Pérez Casillas; I also did not known him the day he was introduced to me . . . what date it was, well, between the 2nd and the 15th of August, 16th of August.' (p. 143)

'A. And . . . And Rafael Moreno, less. What's more, look, I am going to tell you the truth. Rafael Moreno, if I am not mistaken, he was the one that alleged in the alleged in the hearing that he was crazy, I don't know, that he was receiving psychiatric treatment, I don't know if that's him; if it is him, the face of that man, I don't know I, never in my life . . . as if I had never seen him.' (p. 145)

'A. No, I couldn't say that, look. Eugene Ríos, this . . . I after all those facts saw him in Carolina that he was a uniform policeman in Carolina, but up to where my mind . . . is faithful to me I know I spoke to him, but I don't recall if really that statement that is here was taken by me. That is, I can't give faith that this is the truth, as well as I can't say that it is a lie.' (p. 147)

Atty. Colton and Figueroa concluded the investigation that they directed for the mentioned public offices concerning the events of Cerro Maravilla through the submission of a final report on August 29, 1978 to the

Secretary of Justice, Miguel Giménez Muñoz (Exh. 73 SIP). In said report they concluded that Darío Rosado and Soto Arriví died as a result of wounds received in the exchange of shots sustained with agents Colón Berriós, Bruno González, Reverón Martínez and Torres Marrero upon arriving at the area of the Rikavisión facilities on July 25, 1978. They concluded further in said report that 'in addition to the bullet wounds received *no other type of injury was present compatible with severe corporal trauma received alive or dead*' (p. 122); that there was just one series of shots at Cerro Maravilla and that '*[In]o evidence of any kind arises which show that the youths Arnaldo Darío Rosado and Carlos E. Soto Arriví had been mistreated or physically assaulted*' (p. 124); under expert evidence they concluded further that the 'projectile that caused the death of Carlos E. Soto Arriví by a Smith & Wesson revolver, Magnum 357 with series number 56445, assigned to agent Rafael Torres' (p. 125). Because they understood that the mentioned agents acted in self defense of their lives in returning fire initiated by Darío Rosado and Soto Arriví, they recommended in said report the dismissal of the case.

The aforementioned report of Attys. Colton and Figueroa reveals *omissions and aspects unclarified or not delved into in the investigation of those events, which seen in their totality, represent the result of a serious deficiency in the investigation performed*. By its relevance and materiality in relation to the search of the truth which this investigation supposed, their effort to carry them out or to clarify them was *inexcusable*: the evidence to support said report began to be compiled, at least, since August 16, 1978, date when the second autopsies had not yet been performed which had to be made upon the corpses of Darío Rosado and

Soto Arriví and *therefore the causes of their deaths was unknown*. As of that date neither had there been presented the statement of Policeman Jesús Quiñones whose testimony was improperly intervened with by Attys. Colton and Figueroa on August 17, 1978 nor that of the couple Nelson Rivera Torres and Norma I. Cintrón de Rivera, who did so on August 23, 1978 before Atty. Rodríguez Suárez; the aforementioned report concluded the nonexistence of injuries compatible with severe corporal trauma received by the dead youths without the performance of the *anatomopathologic* examination pointed out by Dr. José Ramos Rivera in his sworn statement given on August 10, 1978 in reply to a question concerning the specific causes of the contusions and lacerations on the corpse of Soto Arriví (Exh. 71 SIP); they did not bother to nor did they submit to analyses all the weapons used by the police agents in said event (Exh. 65, pp. 152-153) the records in the Puerto Rico Police Department were not verified to determine which specific agents participated in same (Exh. 12 SIP, pp. 283-284); no conclusion of any kind was made of the person among the participating agents who caused the death of Darío Rosado (Exh. 65 SIP, p. 154); the weapon or weapons which originated the wounds received by Soto Arriví in his elbow, knee and leg was not determined (Exh. 65 SIP, pp. 102-103); the shell, of the Smith & Wesson 38 caliber revolver, found in the facilities of Rikavisión at Cerro Maravilla on August 2, 1978, was not submitted to analysis for the determination of through which weapon it was fired (Exh. 65 SIP, pp. 150-151); *the findings of the autopsy of Darío Rosado indicated that the projectile which caused the wound in the chest came in a direction from up*

towards down, notwithstanding, the fact that agents who intervened in the interchange of shots testified as having shot against those youths from the ground. The question posed by this circumstance was not clarified in the aforementioned report (Exh. 25, pp. [7]8 and 80, Exh. 65 pp. 154-159, Exh. 68, pp. 3 and 4 SIP). They omitted to carry out the analysis of the pipes of the gates in relation to the possibility that there may have been shooting from inside the Rikavisión property; the version of the police agents which absolutely discarded that there may have been shooting from inside the property towards the outside made this a mandatory analysis (Exh. 34 (a), (b) and (c) SIP); they omitted to carry out the analysis concerning the impacts on the Volkswagen vehicle parked within the property of Rikavisión as well as the public vehicle of Julio Ortiz Molina, concerning the possibility that there may have been some shooting from the inside of the property of Rikavisión, for the same purpose. Likewise they failed to analyze the personal belongings of the dead youths such as pants, one of which presented dirt at the level of the knees, the boots, sneakers and underwear; the mask seized from the person of Dario Rosado was not analyzed to detect blood in same and the possible relation of this with the evidence of injuries due to blows on his face.

Towards October of 1978, Atty. Villanueva occupied the position of Assistant Prosecutor in the Superior Court of Carolina. He already had approximately seven years of experience as an assistant prosecutor (Exh. 16 SIP, p. 6). As of that date, he was designated investigating prosecutor by the Secretary of Justice, Miguel Giménez Muñoz, so that he would carry out a new investigation of the events at Cerro Maravilla. That investigation would be directed towards the

search of the truth in relation to said facts and would extend to the actions of the prosecutors in the investigations already performed. (Exh. 24 SIP, p. 1). This investigation began around October 10, 1980 (Exh. 15 SIP, p. 115). In same sworn statements were taken from several persons and it considered divers material and documentary evidence; as a result, he came into knowledge of relevant facts of the investigation. He had before him and examined the file of the previous investigation performed by the Special Investigations Bureau and the Investigation and Criminal Processing Division of the Department of Justice. (Exh. 73 SIP; Exh. 16 sip, p. 24). He submitted the report of his investigation on January 19, 1981 (Exh. 24 SIP). In the same he completely endorsed the report of Attys. Colton and Figueroa of August 29, 1978 in spite of the fact that he noticed and understood that the same contained serious deficiencies because of the great questions created by its conclusions, product of a superficial investigation which left unclarified many of its important aspects; and being the object of persecution and attempts to be pressured by those whom he was investigating in the Police.

(In addition to those specific facts which we have already formulated of which appears the perception which prevailed in Atty. Villanueva for some of the witnesses who had testified before him and of their versions, other instances of the evidence points to his conviction concerning the superficial quality of the investigation which was originally performed by the Investigation and Criminal Processing Division and the Special Investigations Bureau of the Department of Justice. See the annotations of his own handwriting on the margin of different portions of the facts which the report of Attys. Colton and Figueroa contained: at pages 4, 14, 20, 21, 22, 25, 31 and 124 of Exh. 73 of the SIP as is

pointed out by the Special Independent Prosecutor at pages 74 and 75 of his memorandum of April 13, 1987 in which he discusses the evidence. Further the testimonies of admissions of Atty. Villanueva in his appearance on June 30, 1983 before the Senate Committee on the Judiciary in relation to his investigation, upon being questioned by Atty. Rivera Cruz as follows:

'ATTY. RIVERA CRUZ: And you deemed it finished. *Without having concluded in it a series of aspects.*

ATTY. VILLANUEVA: *Definitely, there are aspects which are big question marks concerning the manner and form in which the facts occurred, aspects which were not investigated originally, which should have had dedicated attention in the investigative process and to my understanding aspects which will never be clarified.* (Exh. 15, p. 119).

'ATTY. RIVERA CRUZ: Attorney Villanueva, you are in agreement and you tell this Committee that what happened on July 25, of '78 in the investigation, at Cerro Maravilla, at the scene and what happened after prosecutors Colton and Figueroa, enter, those altogether, you understand that as a superficial investigation?

ATTY. VILLANUEVA: *I understand that yes,*

...

ATTY. RIVERA CRUZ: *That yes.*

ATTY. VILLANUEVA: *... it should have, could have been more profound and much more efficient.* (Exh. 15, pp. 148-149).

See also another result of his testimony before the Committee on that date:

'ATTY. RIVERA CRUZ: I ask you specifically, if you had within your investigation any type of pressure from members of the Puerto Rico Police.

ATTY. VILLANUEVA: Any type of pressure, *yes I know there was some* but it had no success on me.

ATTY. RIVERA CRUZ: From where within the Police of Puerto Rico was there pressure on you as an Investigator in these facts?

ATTY. VILLANUEVA: Well, I know that during that time *I was continuously followed* . . .

ATTY. RIVERA CRUZ: You were followed, you were watched.

ATTY. VILLANUEVA: . . . *I was watched*, I know it because I too had persons who helped me, who protected me, my friends and on one occasion Lieutenant Quiles tried and brought to bear in a conversation the name of my sister who is a member of the P.S.P.' (Exh. 15 SIP, p. 123).

Atty. Villanueva obtained relevant information from the following sworn statements given in his presence. Further on also the results of his actions after he received them:

A. On October 21, 1980 he took the sworn statement of Ortiz Molina (Exh. 13 SIP and Exh. 11 Villanueva). As part of his statement Ortiz Molina took him to Cerro Maravilla following the entire route of the facts which he went through, showing him step by step the

things according to his recollection. In the aforementioned sworn statement Ortiz Molina affirmed for Atty. Villanueva that he saw the agents of the police hitting the youths; he testified: 'they were hitting them with their feet and with the butts of the rifles and calling them obscene words . . . then there they would give them blows with the butts of the rifles and kick them' (Exh. 13 SIP, p. 6). He ratified further having heard a second volley of shots. In relation to this, upon being confronted so that he would explain what Atty. Villanueva understood was a contradiction in having testified to Prosecutor Nigaglioni of the existence of just one shoot-out '[f]rom when the three persons who took [your] car got out until [you] left the specific site', Ortiz Molina answered: 'in posing the question, at the moment in which I was arriving to the tower until I left that tower, how many shoot-outs were there, I answered that one, because the second shots I heard when I was already at the other tower. I want to say that at the time I left I heard one, the other I was already at the other tower.' (Exh. 13 SIP, p. 5).

Ortiz Molina expressed further to Atty. Villanueva the effect of the insinuation of prosecutors Nigaglioni and Colton on July 31, 1978 so that 'he wouldn't tell that they were hand-cuffed or of the second volley,' *through the threat of charging him with perjury and with the fact that they got bothered because he said so.* (Exh. 13 SIP, p. 7).

As a result of his examination of Ortiz Molina in relation to the investigation which he was carrying out, Atty. Villanueva seemed convinced that said witness was stating the truth of what happened.

(Before the Senate Committee on the Judiciary in his testimony under oath on May 7, 1984 Atty. Villanueva stated that the testimony of Ortiz Molina did not warrant any credibility. (Exh. 16 SIP, p[pl]. 3[6; 39]). However, towards November of 1980 he requested the presence of the newsmen of the newspaper The San Juan Star as part of his investigation of those facts and he made to them the expression to the effect that Ortiz Molina *had told the truth that there were two volleys of shots at Cerro Maravilla and that he was his best witness.* (Exh. [16] SIP, p[pl]. 83[-86]). Likewise, he admitted to the Senate Committee on the Judiciary, in his appearance scheduled for May 7, 1984 that he *didn't see any contradiction* between the statements of Ortiz Molina of July 25, 1978 and that of July 28, 1978 before Prosecutor Nigaglioni and Atty. Alvarado Ginorio, respectively, concerning his version of the existence of two volleys of shots (Exh. 16 SIP, pp. 3[6]-3[7]). *To Ortiz Molina himself Atty. Villanueva expressed during the course of his investigation his conviction that he was telling the truth.*)

In spite of the fact that Ortiz Molina expressed to Atty. Villanueva having been pressured by Atty. Colton in the giving of his sworn statement on July 31, 1978, the former did not carry out any investigation in that regard; he merely understood that this matter 'did not warrant investigation.' Therefore, in relation to same, he did not take sworn statements from Prosecutor Nigaglioni who accompanied Atty. Colton at the time of this sworn statement; nor from Atty. Colton himself, nor of the stenographer for Prosecutor Nigaglioni who participated in same; nor of any other person from the Ponce Prosecutor's office with the purpose of determining the validity of that

incident and its reach or significance in the investigation that he was carrying out. (Exh. 16 SIP, p. 94).

Notwithstanding, in the submission of his final report of the investigation Atty. Villanueva discounted credibility from Ortiz Molina under the premise that he had received from him 'a projectile' of a firearm which he gave him as having been found immediately after the facts on July 25, 1978. He deemed that to produce that evidence after two years and almost four months and having testified in various forums concerning these facts, represented 'the epitome of surprise.' (Exh. 24 SIP, p[pl]. [59-60]). In relation to this Ortiz Molina mentioned to Atty. Villanueva that 'some particles' which he found in the trunk of his vehicle the next day after the facts and that he kept them in a pill vial on the back of his bed. Atty. Villanueva seemed very interested in seeing that evidence and requested that he [Ortiz Molina] locate them; upon showing them to him, Atty. Villanueva retained them for analysis. It had to do with a piece of a projectile which he submitted to the police laboratory for analysis. This analysis did not relate this piece of projectile with the facts under his investigation. Atty. Villanueva only received from same a telephone call from a person of said laboratory who told him that same did not have comparative characteristics. *Notwithstanding that that was not the norm in this proceeding, definitely Atty. Villanueva did not verify this laboratory report since he was never sent it in writing nor did he request it; if in effect it was issued, he never had it before him for his examination; nor did he even know any more about the whereabouts of that projectile particle, which is deemed to have remained in the Police laboratory.* (Exh. 15 SIP, pp. 172-175).

B. In the sworn statement given by Julio César Andrades before Atty. Villanueva on October 23, 1980, the latter *received diverse information* (Exh. 23 SIP): he identified Ríos Polanco and Luis Reverón Martínez as members of the Special Arrests Unit which he directed and the circumstance of one of these having informed him upon arriving the afternoon of July 25, from the site of events, the fact of having hit the youths after they were detained (p. 37); the presence of an agent surnamed Montañ in the group of persons who were at Cerro Maravilla that afternoon (p. 46) which was taken out or kept out of the names of the persons who participated in that operation to protect them from the reprisal of subversive groups at his request because it was considered that 'he was hot' with those groups (Exh. 16 SIP, p. 15[0], 152); the admission made to him by one of the agents of having fired on Darío Rosado with a shotgun which was not registered in the Puerto Rico police, and the retention by Andrades of the shotgun by his delivery to a friend by the name *Tomás Centeno* so that he would keep it at his home, which he did during six months (pp. 47-49); the manifestation of the same agent that they 'socked it to them' or they gave a shotgun fire to one of the detained youths after he had begged for mercy, dying as a result of same (Exh. 38 SIP, pp. 79-80); his presence in part of the interrogatory of which Policeman Jesús Quiñones was the object by Atty. Colton at the latter's office and the fact of his having heard Quiñones testify in said interrogatory concerning the existence of two volleys of shots and the rejection by Atty. Colton of that affirmation (pp. 51 and 53); the affirmation which was made by Major Pérez Casillas in the night hours of July 24, 1978 at Cerro Maravilla that the

persons who were being waited for 'had to have their heads chopped off because they were causing too much harm to Puerto Rico,' which meant that they had to be killed (Exh. 39 SIP, p. 72).

From the aforementioned statement of agent Andrades, another evidence which got to Atty. Villanueva's knowledge corroborated what was said by this witness. The fact of the detention and aggression of the youths as well as the second series of shots could have been corroborated from the statement of the direct perception which Ortiz Molina made to him (Exh. 13 SIP); from the statement which was given by Jesus Quiñones on November 21, 1980 of having heard from Ortiz Molina concerning the aggressions of the youths shortly after the same day of the events (Exh. 60 SIP, p. 15), corroborated further the statement of Andrades concerning the delivery to a friend of the shotgun which was used in said operation by agent Reverón Martínez. It had to do with Tomás Centeno from whom Atty. Villanueva had taken a sworn statement on October 30, 1980. In said statement Tomás Centeno informs Atty. Villanueva of having received from Andrades, so that he would hold it, a Remington shotgun, 12 caliber, 2 barrel, which he kept hidden during approximately six months until Andrades requested its return. Tomás Centeno expressed further to Atty. Villanueva that on the date of his statement he had not confronted any problems with the law and that he had been authorized to bear firearms for more than 20 years. [Exh. 20 SIP, pp. 203].

Atty. Villanueva did not take any steps whatsoever to verify the affirmations related to the presence of agent Montañez Ortiz at Cerro Maravilla, nor of the intervention of Atty.

Colton with Jesús Quiñones according to what was said by agent Andrades.

C. Atty. Villanueva knew that during the shoot-out which occurred Marte was within the Rikavisión building; also, through the sworn statement which he gave on October 21, 1980, the fact of having heard one round of shots in the following manner: 'I only heard one round of shots, after I saw the elderly man get put on the car, I didn't hear another series of shots. Now I should inform that within where the transmitters are housed, from where I did my work in Rikavisión there are some fans or 'blowers' which make a lot of noise and which are the ones that take out the hot air from the transmitters towards the outside.' (Exh. 47 SIP, p. 3, second paragraph). Having known the foregoing and that the obstacle of the noise should have been equally reasonable so that when Marte heard one mentioned round of shots, his statement did not constitute an unconditional negation or that he did not suggest the possibility that a second volley of shots occurred. In spite of that, he did not investigate the matter more in depth.

In other parts of his statement Marte informs Atty. Villanueva of the impacts which the Volkswagen vehicle received and the impacts from shots on the middle pipe of each side of the entrance gate to Rikavisión (Exh. 47 SIP, p. 4). Atty. Villanueva *was conscious* that the presence of these impact marks in said vehicle and gate constituted that probably there was firing from inside Rikavisión. However, he did not take any other action to clarify that part of the evidence, with the exception of having

obtained and requested for analysis the gate pipes. *Without any known result which would clarify the doubt.* (Exh. 16 SIP, p. [1]60; Exh. 39 SIP, p. 20[8]).

In another part of the testimony of Marte to Atty. Villanueva he expressed that agent Torres Marrero *was inside the Rikavisión structure with him with a long weapon* at the time of the arrival of the vehicle with the hostage; and of the going out by agent Torres Marrero hardly a minute to a minute and a half before the shoot-out started.

According to the testimony of the indicated agents who informed that they were the only participants of the shoot-out which began upon the arrival of the vehicle with the hostage the *agent Torres Marrero was outside of the facilities of Rikavisión down on the road together with Colón Berrios, carrying a Magnum 357 revolver.* This situation posed a serious contradiction in the evidence. Atty. Villanueva did not carry out any attempt to clarify it or resolve it. Had he done so possibly he would have corroborated or denied the version of said police agents which absolutely discarded the presence at that moment of agent Torres Marrero carrying a long weapon in the inside of the Rikavisión grounds. The clarification of this point, in turn, would have possibly sustained or excluded that firing had occurred from the inside of said facilities, another of the doubts present in the investigation which was being performed; *which also represented a credit or a discredit to the version of the aforementioned police agents who absolutely discarded that any firing was done from inside the Rikavisión facilities.* Atty. Villanueva also did not investigate to clarify the whereabouts of the rifle which according to the statement made to him by Marte was carried by agent Torres Marrero. (In the examination of the evidence

to reach the conclusion of this fact, we have not ignored the explanation or justification of its omission which Atty. Villanueva offered before Atty. Héctor Rivera Cruz in his testimony under oath before the Senate Committee on the Judiciary on June 5, 1983 (Exh. 38 SIP) upon being confronted by said counsel. In same Atty. Villanueva explained that two suspicious cars arrived there (including the public vehicle of Ortiz Molina) with a clear intent to suggest that agent Torres Marrero possibly came out long before from the structure on the occasion of the arrival of the first suspicious car. He explained also that there wasn't any key fact which could indicate the time that transpired from when Torres Marrero left the structure until the shoot-out began. *However, this analysis or rationalization does not appear set out in the report submitted on January 19, 1981 (Exh. 24 SIP).* Independently, Torres Marrero left the structure with a long arm weapon upon the arrival of the public vehicle which brought Ortiz Molina as a hostage and not another vehicle, initiating the shoot-out within this time frame of a minute to a minute and a half after having come out. In these circumstances it was highly questionable to place agent Torres Marrero together with agent Colón Berrio *outside the facilities down the road with a 357 Magnum revolver.* The other explanation or justification of his omission consisted in having given entire credit to the statement which Marte gave. But this supports the mentioned doubt which resulted from the conflict between this evidence which placed agent Torres Marrero *in an irreconcilable form in two different places, carrying different weapons.*

D. By means of a sworn statement which Jesús Quiñones gave to Atty. Villanueva on November 21, 1980,

he informed him of his knowledge concerning the facts related with the events at Cerro Maravilla, specifically that he heard a first series of shots; the arrival afterwards at the Police tower in which Ortiz Molina was accompanied by agent Cartagena Flores making him a sign to him so that he would keep quite [sic]; also of the narration to him by Ortiz Molina of the aggression of which the youths were victims who were assaulted and who held him up and held him hostage; the fact of having heard a second volley of shots several minutes later. Because of this statement Atty. Villanueva was informed further of the incidents which Quiñones experienced on August 17, 1978 in the offices at Attys. Colton and Figueroa and of the pressure exerted by them so that he would not testify that he heard a second volley of shots. Likewise the incident of that day in said statement through which Atty. Colton caused that he be given an employment application, the other incident which motivated that he had to be taken to the hospital and the others which were produced as a result of the appearance at his home on the morning of August 26, 1978 at Attys. Colton and Figueroa together with other officials. In this statement further Jesús Quiñones related to Atty. Villanueva the incident described of the telephone call which was made to him by Atty. Miró on August 10, 1978 (Exh. 60 SIP, p. 20).

Under the criterion of the testimony given by Quiñones not having warranted any credit on that occasion Atty. Villanueva completely omitted to investigate the charges which said testimony entailed against Attys. Colton and Figueroa. (Exh. 16 SIP, pp. 45-46). Although he admitted that it was not the investigative norm the circumstances under

which he took the sworn statement of Quiñones in *his home* on August 26, 1978 he justified said action because of the fact that Attys. Colton and Figueroa 'wanted to end this investigation' (Exh. 16 SIP, p. 47).

Atty. Villanueva considered that it was an important fact for the investigation which he was carrying out, his examination of the written statement which Quiñones gave on August 17, 1978 before Atty. Figueroa up until the moment it was suspended to take him to the hospital. He deemed that it was important to determine the responsibility, if any, which Attys. Colton and Figueroa may have in the imputation which Quiñones made that they were coercing him. *In spite of that he did not make any attempt whatsoever to determine the existence of said statement nor the veracity of the imputations which Quiñones made of having been pressured by said prosecutors on August 17, 1978.* He merely did not think it pertinent to investigate them. *He omitted carrying out the taking of sworn statements [concerning this incident] of the persons who, according to what Quiñones testified, were present while he was being questioned on August 17, 1978,* to wit: Atty. W. Rodríguez Suárez, agent Romo Matienzo, secretary Carmen Aledo and Attys. Colton and Figueroa (Exh. 16 SIP, pp. 55-56). The other person present when he was interrogated was agent Andrades, of whom Atty. Villanueva had already received his testimony under oath in which he expressed having been present in part of said interrogatory on the morning of August 17, 1978 at the offices of Atty. Colton and *affirming the coercion now charged by Quiñones.* (Exh. 23 SIP, p. 51).

Atty. Villanueva omitted to investigate or attempt to locate the sworn statement which Quiñones gave on

August 17, 1978 and which Atty. Figueroa destroyed. *His omission he explained indicating that same was not in the file did not attract his attention.* He had the conviction of the relevancy of that piece of evidence in the determination of whether Quiñones was telling the truth in his charges of what he pointed out caused that he be taken to the hospital. Nevertheless, he did absolutely nothing upon not finding the aforementioned written statement in the file, his explanation appeared simply set out in his testimony in the executive session before the Senate Committee on the Judiciary of May 7, 1984: 'I assumed that it was not there because it was not in the file.' (Exh. 16 SIP, p. 52).

E. Rafael Lugo Torres, supervisor of Marte at Rikavisión, stated under oath to Atty. Villanueva on December 9, 1980 the fact of Marte having stated on July 26, 1978 concerning what had occurred at Cerro Maravilla, *having seen one of the police agents strike with his leg one of the youths on the ground while he was still alive and of having heard afterwards a second volley of shots.* (Exh. 42 SIP).

Adolfo Flores Monge, sales manager of Rikavisión, testified under oath to Atty. Villanueva on December 15, 1980 about the telephone call which Marte made to him at noontime on July 25, 1978 *in which he narrated what had happened at Cerro Maravilla, the occurrence of a first shoot-out and later of a second shoot-out.* (Exh. 41 SIP). In the conduct of this questioning, Atty. Villanueva showed poor investigative objectivity, indicative of an attitude of supporting the version of the police agents who sustained the occurrence of just one volley of shots. (This last was evinced by what is informed by the following part of the interrogatory of

Atty. Villanueva to said witness when he informed them that Marte had already expressed a shoot-out some 15 or 20 minutes before:

P. Did he tell you that he was hearing shots?

W. Yes, that's what he told me.

P. What did he say?

W. *He told me, I have to leave you because apparently there's another shoot-out.*

P. But notice that what I ask you is if whether he told you or not if he was hearing shots.

W. What he said was that *apparently there was another shoot-out.*

P. In other words, *you don't know if there were shots or not.*

W. No sir. I only know what he told me: "I have to leave you. I'll continue talking to you later because apparently there is another shoot-out". (Exh. 41 SIP [pp. 2-3]).

In reality, to the question of whether Marte had said if he was hearing shots, the witnesses' answer was affirmative and the only thing that justified a clarification on the part of Atty. Villanueva was the qualification 'apparently' which included the reference to Marte. However, the point brought out by Atty. Villanueva of establishing an equivalence that the answer given concerning what happened by Marte meant that the witness did not know if shots had occurred or not, lacked complete relation with the question proposed. This strange manner of interrogating undoubtedly showed the purpose of leaving established through the testimony of Flores Monge that he did not know if shots had been produced

or not through the introduction by said prosecutor of a non sequitur conclusion in the form of an answer.)

Notwithstanding the aforementioned testimony of Flores Monge and Lugo Torres, Atty. Villanueva omitted to confront Marte with the effect of his statements or investigate in depth with him the veracity of said affirmations.

F. Ismael Ruiz Vázquez testified under oath before Atty. Villanueva on December 23, 1980 that while being a visitor in the area of El Merendero at Cerro Maravilla, he heard at around 12:30 of the day a *first volley* of shots and subsequently in a space of time which he extends to from two to five minutes a *second volley* of detonations (Exh. 62 SIP[, p. 2]).

G. With the exception of the sworn statement which is indicated which these facts which agent Reverón Martínez gave before Atty. Villanueva on December 15, 1980 (Exh. 1(c) Villanueva), *he didn't take any sworn statement from any other of the five agents reported as participating in the mentioned operation at the Rikavisión facilities. He based his omission on his speculation that they [sic] would repeat the same thing as their original statements.* (Exh. 38 SIP, p. 25).

Atty. Villanueva came to know during his investigation [sic] of other elements of proof which represented and which posed serious conflicts and questions whose investigation and attempt to solve same were indispensable in the search of the truth of what occurred at Cerro Maravilla and in the realization of his task. *He omitted to carry out the investigation [sic] to clarify them and that contributed to the truth remaining hidden of what really occurred at*

Cerro Maravilla. Following [are] some facts that he knew and the doubts of same:

1) Modesto Delgado hid from Atty. Villanueva the existence of important evidence in the investigation, for example the metallic sheet ("screen") of the window of the Rikavisión property which was broken by agent Ríos Polanco with his rifle before shooting. (Exh. 88 SIP). He was moved by the interest of not involving the Rikavisión firm for which he worked who did not want to be identified with the facts under investigation. Delgado informed Atty. Villanueva having found some fifteen or twenty shells of an AR-15 rifle around the site of the events. Three or four of them that he had found inside the facilities next to the left side fence which separates that property, he reported having found them in a place similar or close to where he really found them, but on the other side of the fence, under the motivation pointed out. The remainder of the shells Delgado reported having found them where he said that he really found them, further down, very close to the paved road and the place where according to the version of the police agents' who participated in said facts was located agent Colón Berrios at the time at which the public vehicle came up with the hostage. (Exh. 86 SIP). This place was very close to the one in which agent Montañez was when that vehicle came up. Three of said shells which Delgado still had available he gave them to Atty. Villanueva. (Exh. 16 SIP, pp. 171-172).

The proximity and position of the place in which Delgado reported having found the three to four shells mentioned with the area of the inside of the Rikavisión

property, make that finding compatible with the possibility that in the shoot-out they would have shot from that *place in the direction towards the site in which the public vehicle of Ortiz Molina was parked*. It was equally compatible with the bullet impacts on the left side of said vehicle as well as with other marks of impacts on the pipes of the gate and in the Volkswagen vehicle; in an analogous manner as if the shots would have originated in the interior of the Rikavisión property. The version of the five police agents reported as having participated in said events, *equally discards in a complete and absolute manner that there had been any firing from that place in which Delgado informed having found the three or four shells of an AR-15 rifle*. On the other hand, the place of finding of the remaining shells was compatible, by its location, with the position or the place in which according to the version of the police were posted agents Colón Berrios and Torres Marrero; but incompatible with the number of shells found with the fact that the projectiles of same were fired by agent Colón Berrios, *the only one who carried a rifle according to the versions of those agents and whose rifle jammed upon being fired, as was reported by Colón Berrios himself*. It was equally incompatible with the fact that they were fired by a weapon which is reported to have been carried by agent Torres Marrero - Magnum 357 revolver. (Exh. 31, (a), (b), (c), (d) and (e) SIP).

The foregoing situation *presented several questions which required being investigated*, to wit: the correct determination of the weapon used to fire the three or four shells of the AR-15 rifle reported as having been found very close to the lateral fence and the interior of the Rikavisión property; the rifle which fired the remaining

shells found further down very close to the paved road and from the place in which it is informed were agents Colón Berrios and Torres Marrero; as well as the determination of the persons who carried these weapons. In the case of the shells found very close to the lateral fence and the interior of Rikavision, the findings of this investigation would have shown the use of other arms in the shoot-out, which would have possibly meant the presence of other persons firing, in open contradiction of the version of the indicted police agents who absolutely discarded *in the case of the shells found very close to the paved road, it would have possibly permitted to conclude the presence of a greater number of agents set out on that place, or if the same, with different weapons to those reported, in open conflict of the version that the police agents were offering.*

Atty. Villanueva did not carry out on the shells any type of test to clarify the questions expressed. He recognized credibility to Delgado in relation to the delivery and the information which he gave of having found these shells and was conscious that they were compatible with an AR-15 rifle, but omitted to carry out an objective test through the examination of the weapons informed as used in the entire operation at Cerro Maravilla as well as the oral examination of the witnesses through the questioning of the participating agents. (Exh. 38 SIP, pp. 178-179). *He did not question any of these concerning those aspects and therefore he left unclarified in the report he rendered.* (Exh. 24 SIP, Exh. 38 SIP, p. 180).

2) Atty. Villanueva knew of the finding and delivery to Atty. Rodríguez Suárez on August 2, 1978 in the first investigation, of a shell of a 38 caliber special revolver which in same was not analyzed nor clarified. *He*

knew, further, from the version of the five police agents that none of them fired a 38 caliber special revolver (Exh. 38 SIP, pp. 203; Exh. 31 (a), (b), (c), (d) and (e) SIP); which according to the conclusion of the report of Attys. Colton and Figueroa, Soto Arriví carried a S. & W. 38 caliber revolver which was fired one time and Dario Rosado a S. & W. 38 caliber fired twice, both weapons were found with the shells of those projectiles. (Exh. 73 SIP, pp. 63-73). In addition that with said shell were delivered for analysis to the laboratory are the four other shells of a pistol whose result was positive which were fired by the pistol which González Malavé carried; that the other weapon which González Malavé carried was not fired. (Exh. 73 SIP, p. 64). This laboratory examination did not produce any conclusion in relation to what firearm fired the 38 special caliber shell and the only determination made by the examiner of the police laboratory, to whom said shell was submitted for analysis, was that it was not fired by the weapon which was given to him for the test -the pistol.

Atty. Villanueva did not make any attempt whatsoever to determine what weapon fired the 38 caliber aforementioned revolver shell. His report left without concluding what firearm fired the projectile of same. (Exh. 38 SIP, 5, 6, & 7). In this manner the verification of the existence of a 38 caliber revolver which would have been fired, would have conflicted with the version of those police agents which absolutely excluded the use of other firearms than the ones they reported carrying. This would have meant the presence of other persons in addition to them firing shots during those facts or that the aforementioned agents would have fired from different

places and through other weapons than the ones they informed in their sworn statements (Exh. 31(a), (b), (c), (d), (e) SIP).

3. Atty Villanueva examined through his investigation the photographs of the corpses of Dario Rosado and Soto Arrivi (Exh. 32(a), (b), (c) and Exh. 70 SIP) and he noticed that both showed the presence of blows on their faces. He also had knowledge of the affirmations of Ortiz Molina to the effect that before leaving the scene of the facts he left two youths alive and that the police physically assaulted them. (Exh. 15 SIP, p[pl]. 141-142). Considered that it was very important in his investigation to explain how these blows were caused. [He] omitted to investigate in any manner that evidence to determine and explain how the same were caused. In the report of his investigation that he submitted on January 19, 1981 neither did he set out an explanation concerning this. (Exh. 15 SIP, p. 138).

(In the testimony under oath presented by Atty. Villanueva before the Senate Committee on the Judiciary on June 30, 1983, he makes admissions in reply to Atty. Rivera Cruz which we have considered in formulating the preceding fact. [It] contains the effort of Atty. Rivera Cruz to get him to explain the reason for his inaction through confrontation with the affirmations of Ortiz Molina:

'ATTY. RIVERA CRUZ: And see if it is or it is not so, that according to your investigation, you had a witness called Julio Ortiz Molina, who testified at some time after July 25, but who testified that he saw when they were hitting those youths, [correct]?

ATTY. VILLANUEVA: I believe that he testified that on some occasions.

ATTY. RIVERA CRUZ: And he testified. And wasn't that affirmation of Mr. Julio Ortiz Molina corroborated by *what you saw in the photo?*

ATTY. VILLANUEVA: No.

ATTY. RIVERA CRUZ: Why?

ATTY. VILLANUEVA: Because Don Julio didn't specify, to my understanding, whom had been hit, when they had been hit.

ATTY. RIVERA CRUZ: *Didn't he refer to the two individuals who had taken his public vehicle with Arnaldo, with Alejandro González Malavé.*

ATTY. VILLANUEVA: There were three (3).

ATTY. RIVERA CRUZ: There were three (3). You say that Don Julio *was not referring to those two subjects.*

ATTY. VILLANUEVA: *He possibly referred, but as a corroborating detail, strictly speaking, I think not.*

ATTY. RIVERA CRUZ: You understand that if Don Julio was testifying that the two (2) youths who died there, Soto Arrivi and Arnaldo Darío Rosado, before he left the scene he left them alive and the Police were giving them blows and you observed in a photograph afterwards that the youths had blows, blows in the face; that the photograph is not a corroboration of what Don Julio Ortiz Molina had told you.

ATTY. VILLANUEVA: *It may possibly be, but the particular detail in relation to the investigation, in all the details could corroborate that information of his.*

ATTY. RIVERA CRUZ: You could corroborate [it].

ATTY. VILLANUEVA: *I could corroborate it as I could corroborate other findings of the investigation also.* (Exh. 15 SIP, p. 141-143).

4) Atty. Villanueva knew of the information which was pointed by the admission of agent Reverón to agent Andrades that he was carrying a non-registered shotgun on July 25, 1978 at Cerro Maravilla, corroborated in part by what was offered in the sworn statement of Tomás Centeno of having received said weapon for safekeeping in his home and keeping it for some six months; this last in turn corroborated that part of the testimony of agent Andrades.

He was further aware of the information suggested from the registry of weapons of the Puerto Rico Police demonstrative that the 12 caliber shotgun assigned to agent Reverón on July 24, 1978 was returned to the Police that same day, July 24 and its entry registered in same; and that agent Reverón arrived at Cerro Maravilla on July 24th, overnighting until the following day of the events (Exh. 1(c) Villanueva). From said registry no shotgun appears that had been taken out by any police agent on July 24, 1978 and delivered on July 25, 1978. (Exh. 15 SIP, p. 194). This presented a situation of conflict in the evidence which Atty. Villanueva considered important to investigate to determine the weapon that was really carried by Reverón in that operation (Exh. 15 SIP, p. 198). Nevertheless, he did not attempt to in depth in the investigation to resolve that conflict and ended same without determining the weapon that agent Reverón was carrying on July 25, 1978 at Cerro Maravilla (Exh. 15 SIP, p. 189).

5) He became *aware* that the impacts on the pipes of the entrance gate to Rikavisión were compatible with having been caused by a firearm. (Exh. 15 SIP, p. 168). He knew that as part of his investigation it was *important to determine and resolve* in what form and manner said gate was impacted. He was further *aware* that the evidence before him showed the possible occurrence of shots made *by persons who were not the five agents mentioned who were reported to have participated in the shoot-out* upon the arrival of the vehicle with the hostage and that there could have been shots made from inside the Rikavisión property towards the outside. (Exh. 38 SIP, p. 20[8]; Exh. 16 SIP, p. 160). Even so, *Atty Villanueva did not try to make the determination or resolve the doubt as to in what form and manner said gate was impacted*. Neither, how the impacts were produced on the Volkswagen vehicle of whose presence [of those] in the interior of said facilities were aware of (Exh. 15 SIP, p. 164). On the date in which he carried out the tasks of his assignment this vehicle was found in the possession of Modesto Delgado and *was available for his examination*. Atty. Villanueva never required it nor impounded it. The determination of both aspects had relation to the possibility that there may have been shooting *from the interior of the Rikavisión property and its realization in case the latter should be found, would have denied and decreased the value of the version of the police agents on how the facts occurred*.

6) He knew of the existence of a perforation of the entry of a projectile in the rear part of the Chevrolet vehicle of Ortiz Molina, with the direction from the back towards the front and from below going up, which made him *be aware that there was some shot from*

behind said vehicle. (Exh. 4 and 5 SIP). He recognized the importance of determining who fired while being on that side (Exh. 15 SIP, pp. 178-80). This determination would have corroborated or denied the version of the police who participated in said shoot-out concerning how they occurred since same absolutely excluded that the vehicle of Ortiz Molina may have been shot from behind. (Exh. 31(a), (b), (c), (d) and (e) SIP). However, Atty. Villanueva did not investigate this angle of the case and same remained as an unsolved question.

7) Atty. Villanueva had before him the pieces of evidence occupied in the investigation consisting of a trouser which showed dirt at the level of the knees and of the mask which Darío Rosado was wearing, to determine the presence of blood. He considered it of importance in his investigation that he should make to clarify the statements that the youths were detained and physically assaulted. Notwithstanding, as in the first investigation Atty. Villanueva [he] also did not order the analysis of these pieces of evidence (Exh. 24 SIP). The findings of this analysis would have possibly contributed to support or decrease the value of the version of the police agents of how the facts occurred.

8) In accordance with the sworn statement given before Atty. Villanueva by Jesús Quiñones on November 21, 1980, agent Cartagena Flores drove Ortiz Molina to the police tower shortly after occurring the first volley of shots (Exh. 60 SIP). Atty. Villanueva had before him another version that it was Major Pérez Casillas who took Ortiz Molina to that place (Exh. 18 SIP sworn statement of Pérez Casillas before Atty. Miró on August 7, 1978). He considered that it was important within his

investigation to determine who was the agent who really drove Ortiz Molina to the police tower (Exh. 38 SIP, p. 152). This determination could strengthen or weaken the version of the police agents concerning how the facts occurred in view of the testimony under oath of Jesus Quiñones given before Atty. Villanueva that upon being taken to the police tower, Ortiz Molina related to him in the presence of agent Cartagena Flores of having seen the police agents striking the two detained youths, in addition, by his statement of Quiñones himself having heard a second volley of shots after some 5 or 15 minutes after having heard the first volley of shots. (Exh. 60 SIP). Atty. Villanueva *did not carry out any effort to determine and resolve this conflict in the evidence before him.*

9) It was known to Atty. Villanueva the conclusion of the autopsy performed on the corpse of Darío Rosado to the effect that the wound in his chest indicated the trajectory of a projectile which *caused his death in the direction of up towards down.* (Exh. 68 SIP, Exh. 16 SIP, pp. 146-147). In the same manner the version of the police agents who intervened in the shoot-out when the vehicle arrived, which was incompatible, *of having fired on the youths from the ground, that is, in the direction of down towards up.* He was aware that this situation presented a *conflict in the evidence which was not investigated nor clarified in the first investigation* (Exh. 16 SIP, p. 147; Exh. 73 SIP). Atty. Villanueva *also did not investigate, analyze, nor resolve this conflict in the evidence.* (Exh. 16 SIP, p. 147; Exh. 24 SIP).

10) From the pocket of the shirt of González Malavé five matches were impounded, one of them used (Exh. 81 SIP). According to the version of the

police agents participating in said operation, they would provide surveillance to this property at Cerro Maravilla in view of a tip that they had received that an act of terrorism would be committed at same through the assault, destruction or blowing up of the towers of said facilities (Exh. 18 and 31 SIP). However, from the evidence impounded, no explosive material arises capable of producing destruction of said towers. (Exh. 73 SIP, pp. 71-77). In the judgment of Atty. Villanueva the persons who arrived there with the hostage 'did not arrive to destroy anything' (Exh. 38 SIP, p. 171). On the other hand, in view of the circumstances of the participation described by undercover agent González Malavé in the groups mentioned in which he infiltrated as such (Exh. 19, 20 and 21), the nature of which he had particularly in the assault on the Rikavisión facilities *showed his leadership in said group as an inciting agent*. The evidence impounded from the person of González Malavé clearly strengthen the character described of his participation in said attached, matter that was treated *with relevance* in the reports of Atty. Colton and Figueroa which concluded not having found any demonstrative evidence 'that the Puerto Rico police or the undercover agent González Malavé would have instigated the youths Carlos E. Soto Arriví and Arnaldo Darío Rosado to commit any crime.' (Exh. 73 SIP, pp. 125-128). Atty. Villanueva *kept completely silent* in his report submitted on January 19, 1981 in that he had impounded the aforementioned evidence, which he did not mention in any way (Exh. 24 SIP). *This had the effect of avoiding that said report reveal a fact which would have cast serious and deep suspicion concerning the motivations and legitimacy of the police in relation to their participation and intervention by means of the aforementioned undercover agent in said attack on the Rikavisión facilities.*

11) The presence of agent Torres Marrero outside the Rikavisión facilities together with agent Colón Berrios carrying a 357 Magnum revolver constituted *an irreconcilable contradiction with the statement of Marte that placed him at the same moment inside the building or leaving it with a long weapon*. From that contradiction in the evidence Atty. Villanueva was forewarned. (Exhs. 31 SIP and 47 SIP). Likewise, from the importance of determining the precise location of Torres Marrero for the importance of that fact to know if there was shooting had from inside Rikavisión. (Exh. 15 SIP, p. 164). That determination would corroborate the other evidence of the existence of impacts on the *pipes of the entrance gate* and in the Volkswagen and Ortiz Molina's Chevrolet vehicle would *strongly suggest that shooting was done from inside the facilities*. This corroboration would have meant the *negation of the version of the police agents of how the facts occurred which discarded shots from the inside of that property*. In spite of the importance of the determination of the precise location of agent Torres Marrero in relation to those other aspects of the investigation, Atty. Villanueva did not investigate same and that matter remained unresolved upon submitting his report. Likewise he failed to investigate and left unresolved the conflict associated with same with regards to which weapon was really carried by agent Torres Marrero. (Exh. 24 SIP).

12) Atty. Villanueva was advised of the possible presence of agent Montañez Ortiz at Cerro Maravilla. (Exh. 23 SIP). The investigation of this was very important in view of the version of the police agents which did not report at that place and at that moment the facts which caused the deaths of the youths other than the five

mentioned agents, which excluded Montañez. Atty. Villanueva did not investigate to clarify this matter and same remained unresolved in the submission of his report. (Exh. 24 SIP; Exh. 16 SIP, p. 153).

13) The investigation carried out by Atty. Villanueva did not include the determination of which agent caused the death of Darío Rosado as well as the first one carried out by Attys. Colton and Figueroa. (Exhs. 73 SIP and 38 SIP, p. 117). On the other hand, the report submitted by Attys. Colton and Figueroa concluded to the effect that the projectile which caused the death of Soto Arriví was shot from a Smith & Wesson, Magnum 357 revolver, assigned to agent Torres Marrero. (Exh. 73 SIP). In view of the conflict in the evidence which caused that the precise location of agent Torres Marrero was not resolved and the weapon that he carried at the time that the shooting occurred, continued without being solved as to which agent caused the death of Soto Arriví. Atty. Villanueva did not carry out any attempt of any kind to try to resolve this doubt in the investigation which he performed; he limited himself to recognize the conclusion of the first investigation. (Exh. 24 SIP).

During his investigative work Atty. Villanueva was the victim of repressive action on the part of the Puerto Rico Police: members of it followed him and watched him and exercised pressure on him with the purpose of intimidating him or scaring him (Exh. 38 SIP, pp. 127, [215,] 216. Inclusively, he began to fear for his life and to take personal security measures. Specifically Lieutenant Quiles exercised pressure on him. (Exh. [38] SIP, p[p]. 126-127). He did not take any other action in regard to this other than the presentation of his

resignation as prosecutor upon the submission of his final report of investigation. (Exh. 15 SIP, p[p]. 115, 116).

Atty. Villanueva considered that the investigation which produced the report of Attys. Colton and Figueroa on August 29, 1978 (Exh. 73 SIP) was superficial. However, under the premise of not having found any *believable theory* against the self-defense which included the version of the participating police agents at Cerro Maravilla, *he concluded that he could not discard it* (Exh. 38 SIP, p. 119) and accepted all of the conclusions of the aforementioned report of August 29, 1978 (Exh. 38 SIP, p. 41).

In reality, Atty. Villanueva committed himself to the theory of self-defense proposed by the police agents in his version of how the facts occurred. By his omission in investigating the carrying out the search for the clarification of what occurred at Cerro Maravilla through the examination and utilization of the diverse elements of evidence and resources available to him, he kept his theory of self-defense of said agents.

(In the process in spite of the evidence which has brought us to the conclusion of the fact of the preceding prior paragraph, we take note of the part of the evidence which explains *the scope of the commitment which tied the investigation of Atty. Villanueva with the police version of the facts*. Atty. Villanueva made and formulated for himself in his report of his investigation submitted the following proposition and conclusion:

"A detailed and thorough study, while the scene of the facts was still fresh, would have probably added some [more] specific details of what occurred there on July 25, 1978. However, in absence of evidence which with the passage of time has disappeared, it is not up to us to

speculate concerning the possible probative value of same. *At any rate we understand that had said evidence been available, same would not have changed the conclusions of the original report which we have adopted as ours.* This same conclusion extends itself to the unexplained findings such as the shots on the entrance gate to the Rikavisión relay station and the shells of firearms found there by Mr. Modesto Delgado García" (Exh. 24 SIP, pp. 123-124).

That is to say, Atty. Villanueva refers to the evidence which he deems disappeared from the nature that would have explained the shots on the entrance gate to Rikavisión and the finding of shells of firearms found inside, *whose probative value he did not know; but in spite of the fact that he did not know said probative value, he understood that had it been available it would not have changed the conclusions of the report of Attys. Colton and Figueroa.* We interpret that with this evidence he unquestionably affirms the commitment to which we have referred. The explanation or justification for said commitment appears set out in his testimony before the Senate Committee on the Judiciary on July 5, 1983, in answering questions from the president of said committee, Atty. Aponte Pérez, of why having referred in his report to the presence of conflicting evidence, instead of ruling on the question of credibility of same he did not opt for making a recommendation *so that the facts be submitted before a magistrate so that he would make the determination of credibility and if there existed or did not exist probable cause.* Atty. Villanueva, after setting out his opinion of how the Prosecution was not authorized or obliged to submit a case before a magistrate stated:

'There are other considerations which have to be taken into account. The fact of submitting a case to a magistrate, may entail enormous, I would say, damages to the reputation of several persons, and the reputation and tranquility of the police itself, and I think that you have to valiantly face what the evidence shows and make the decisions.'

The expression which proposes to face in a valiant manner 'to what the evidence suggests' which Atty. Villanueva formulates in his reply, is found *out of context* in his explanation of the considerations which he expresses have to be taken into account as the avoidance of questioning the reputation of persons and the reputation of police itself. *This is so because in the decisions which have to be taken on the basis of all the evidence cast, it is not necessary for it to take into consideration those other considerations pointed out by him. Therefore, we interpret them within his own sense the admission that Atty. Villanueva makes of the quoted proposition.*

The designation by Atty. Villanueva as investigating prosecutor of the events of Cerro Maravilla was a consequence of the manifestations of agent Julio César Andrades which appeared in the country's newspaper in the first part of October of 1980. Agent Andrades in his manifestations charged that Atty. Colton with the realization of a cover-up of the events of Cerro Maravilla through the action of preparing and coordinating the sworn statements of the police who participated in the operation at Cerro Maravilla (Exh. 49, 50, 51, 52, 53, 54, & 55 SIP). In view of that Atty. Villanueva took the sworn statement on October 23, 1980 of agent Andrades (Exh. 23 SIP) granting him immunity for any crime which he may have committed as to said acts. (Exh. 24

SIP, p. 101). In said questioning of agent Andrades, Atty. Villanueva *did not attempt to investigate the actions of Atty. Colton in omitting to formulate questions concerning the charges that arose from the fact of what was raised by said agent in his statements.* With the exception of the sworn statement which Atty. Miró took on December 9, 1980 (Exh. 27 SIP) he omitted to carry out the investigation to clarify said charges. *He did not take a sworn statement of the prosecutors Colton, Figueroa, nor Brunet, participants in the first investigation referred to, to investigate the validity of those charges nor of any of the police agents participating in the operation at Cerro Maravilla who gave sworn statements of their investigation.* (Exh. 24, SIP).

The information then before Atty. Villanueva indicated to him that in the first investigation Atty. Miró was the prosecutor who took the sworn statements of all the police agents participating in the operation at Cerro Maravilla, with the exception of agent González Malavé whose statement was taken by Atty. Brunet (Exh. 18, 19, 20, 30, 31, 72 & 85 SIP). In the questioning of Atty. Miró, Atty. Villanueva did not verify with him the fact that it was he who effectively took the sworn statements of the police agents which were reported as having testified before him. On the contrary, he put at his disposition the documents which contained said sworn statements for his examination and corroborated that they reported the sworn statements of the mentioned agents. *Neither did he investigate nor inquire into the circumstances in which said statements were taken so as to be able to verify the validity of the charges made that Atty. Colton had coordinated and prepared same.* (Exh. 37 SIP). *In that manner the mentioned charges to Atty.*

Colton were not clarified in any way. (After having submitted the report of his investigation on January 19, 1981, Atty. Villanueva intervened in a press conference which was held on January 27, 1981 as the only participant in which he divulged and gave great publicity to many details of his report through the country's news media. At the same time he classified as lies the statements of some of the witnesses of the investigation. (Exhs. 75, 76, 77, 78 & 79 SIP; Exh. 16 SIP, pp. 133-135).

(The Special Commissioner received into evidence proof of the professional reputation which the respondents have enjoyed with the exception of respondent, Atty. Figueroa.)

Without considering the conclusions which are derived from the facts of this case, Attys. Miró, Brunet, Villanueva and Colton have enjoyed a good reputation in the professional community in which they have performed as prosecutors and attorneys; having performed with responsibility and as serious professionals, respectful, industrious, and maintained a clean service sheet." (Emphasis supplied; numbering of the determinations omitted; and brackets ours).

V

Allegations:-

In view of these facts, the SIP asked us to consider certain charges which the Special Commissioner, Judge Limardo, did not find proven. On the other hand, the respondents set out several arguments in the contrary and reasons why they should not be disciplined.

Let us concentrate first on the allegations of the SIP.

It questions that the Special Commissioner, Judge Limardo, did not conclude that the respondent Figueroa Vivas, together with Colton Fontán, insistently suggested to witness Martes Ruíz on August 3, 1978 that he testify-contrary to what the latter asserted- that nobody had shot from inside the Rikavisión facilities.

He also questioned that there was no determination that on August 2, 1978 Colton Fontán induced the stenographer to "alter her stenographic notes for the purposes that it not show there statements of the witness [police agent] that Colton Fontán understood that it 'would prejudice the police'." We note that this fact is the *common* basis charges number 2 against Colton Fontán and Miró Carrión, and number 4 against Brunet Justiniano.

Lastly, he complains that it did not conclude that Miró Carrión lied in denying before the Senate Committee on the Judiciary that during the individual questioning of the five (5) police agents done at Rikavisión on August 2, 1978, "the other five were outside the structure when the fact is that the five agents were inside."

We have carefully examined these allegations. Except for the preceding determination, related to the testimony of Miró Carrión before the Senate Committee on the Judiciary, in regards to the location of the police within Rikavisión, we support the denial of the Special Commissioner, Judge Limardo. *His report and conclusions reveal a serious and reflexive analysis.* In view of these legitimate doubts presented by the evidence -including that manifested by witness Marte Ruíz indicative of unsureness concerning the real identity of the "other" prosecutor- we

opt for respecting the determinations and not finding proven those other two facts.

In regards to charge number 11 against Miró Carrión, that he knowingly lied to the Senate in regards to the presence of the police within Rikavisión, suffice it to clarify that more than a determination in which there is present the element of credibility, we are facing an error of form stemming from the inadvertence of the Special Commissioner, Judge Limardo, of setting it out as a proven fact.

The allegations of the SIP having been adjudicated concerning errors in the appreciation of the evidence, let us examine the corresponding allegations of the respondents.

Three clarifications are necessary. *First*, in an implicit or explicit manner, with greater or lesser vehemence, all the respondents propose the thesis that they could not have found the truth of the facts of the incident of Cerro Maravilla because the police and certain witnesses lied to them during their investigation. The appearance of Colton Fontán and Figueroa Vivas give us the impression that they still question the credibility of certain witnesses which contributed to bringing the truth of what happened to the surface.

We reject such a proposition. We cannot reduce the solution of the case to an equation so simple and superficial. As we have seen, from the beginning, most of the direct or circumstantial evidence was before their eyes or accessible with a reasonable professional effort. Because of *gross negligence* (commissions or omissions) they ignored and on occasions twisted or hid said evidence. In

the cases of Colton Fontán and Figueroa Vivas, the coercion and direct intimidation of witnesses occurred. The conclusion which comes to the surface is that from July 25, 1978 unexplainedly all, in one way or another, so solidly unified *a priori* with the theory of self-defense set out by the police agents. They opted for consciously intervening and "investigating" with the premature and preconceived idea of supporting and officializing that theory. Through this conduct they committed not only a grave professional error, but ethical. See, Gross, Han G.A., *Criminal Investigation*, The Caswell Co. Ltd. (1962), pp. 10-15.

A simple examination of the photographs of the corpses of Darío Rosado would have sufficed, *in a [sic] un-alerted spirit*, to immediately place the theory of self-defense in doubt. Without difficulty we have been able to see from "photographs of the corpse of Darío Rosado face up thrown on the ground. (Exh. 32(a), (b) and (c) SIP). These show the chest completely bloody and the presence of a lot of blood in the areas of the nose and the mouth. These marks are observed on the upper part of the forehead, over the right eyebrow covering part of the eyelid; over the left cheekbone and the upper right lip. The corpse of Soto Arriví also was photographed while it remained at Jayuya Hospital. (Exhibits 70(a) & (b) SIP). These photos show likewise the presence of the effect of trauma and multiple lacerations in different parts of the face, with edema -beneath the right eyebrow, very close to the eyelid; in both cheekbones, beneath the left eyebrow, over the chin, and in the lower part of this, in the area of the chest and the left arm. All the described marks in the face and body of Darío Rosado and Soto Arriví are clearly compatible with blunt blows received."

It is evident that these photographs "perpetuate in a sure, efficient and reliable manner -beyond the normal capacity of the human senses- the incriminating conduct" of the police. *People v. Luzón*, 113 D.P.R. 315, 326 (1982). As we said in *People v. Lebrón González*, 113 D.P.R. 81, 101 (1982), the "fidelity and contemporaneity of the photographs reflect sufficient facts, inclusive the blood stains . . ." and it's that "a photograph is a faithful and exact reproduction of the person, place or thing . . ." *People v. Márquez*, 67 D.P.R. 326, 335 (1947). They can be "considered as supplementary to the autopsy report." O'Hara, Charles E., *Fundamentals of Criminal Investigation*, C.C. Thomas (1956) p. 54. Here, the autopsy of the corpse of Darío Rosado revealed that the chest would [sic] indicated a normal projectile trajectory from *upwards towards downwards* (Exhs. 16 and 68 SIP), which was incompatible with the physical position which supposedly the police assumed on shooting.

They should not have, then, the respondents ignored or underestimated the value of these photographs. As a general rule, in terms of our senses and mental acuity, we understand better what we see than what we hear. A photo stimulates our visual sense. Its intrinsic worth lies in the capacity to perpetuate, in an objective manner, multiple details. By its tangible nature, the photographs describe better than words. Different from oral testimony of a witness, they are not confusing, nor do they rely on a "fallible or poor memory."

On innumerable occasions we have supported the immense probative value of photographs, for the purposes of illustrating essential facts concerning what was testified to by the witnesses -*People v. López Rodríguez*, 118

D.P.R. 515, 543 (1987); *People v. Ortiz González*, 111 D.P.R. 408, 414 (1981); *Pueblo v. González Colón*, 110 D.P.R. 812, 820 (1981); *Pueblo v. Calviño Cereijo*, 110 D.P.R. 691, 696-697 (1981); *Pueblo v. Ortiz Rodríguez*, 103 D.P.R. 368, 372 (1975); *People v. Torres*, 75 D.P.R. 231, 235 (1953)- to demonstrate the injuries produced,- *People v. Rodríguez Colón*, 95 D.P.R. 614, 617-618 (1967); *People v. Pacheco Stevenson*, 83 D.P.R. 842, 848 (1961); *People v. Rivera*, 69, D.P.R. 538, 541 (1949); *People v. Zayas Ortiz*, 65 D.P.R. 538, 541 (1946); *People v. Márquez*, 67 D.P.R. 326, 335 (1947); concerning the physical characteristics of the scene of the crime, place from where a witness observed and the place where a victim fell - *People v. Lebrón González*, *supra*;- to be able to corroborate the veracity of what was stated in regards to the geographic location of [. . . a] building, the scene of the crime and areas susceptible to visual perception by the supposed witness . . . " *People v. Pagán Díaz*, 111 D.P.R. 608, 618 (1981); and *Illamas v. González*, 51 D.P.R. 803, 807-808 (1937).

Second, the allegation that the Special Commissioner, Judge Limardo, *erroneously* admitted written sworn statements of persons who did not testify at the hearings is not correct. From the examination of the transcript -incidents concerning that aspect-, it appears clearly that said statements were offered only against that respondent who took it, or who came to have knowledge of its content, and that only for the sole purpose of establishing what he knew, through that statement. Its pertinent [sic] is not discussed, to wit, in view of the information obtained, evaluating a course of action, if any, which the involved respondent followed. Its that the statements constituted the most exact and precise evidence of what

the person testified, contemporaneous with the investigations conducted by the respondents themselves. There is no doubt that that was the best direct evidence of what the SIP pretended to prove.

Rule 10(H) of Evidence.

Third, none of the respondents testified at the hearings before the Special Commissioner, Judge Limardo. They opted for only presenting in their favor certain documentary evidence and the testimony of several witnesses, mostly to establish their good reputation. For this reason, -without being under oath nor being subject to cross-examination, we cannot in this stage consider as "proof" any of the justifying expressions of a conduct which by way of written testimony are made directly and which were not presented before the Special Commissioner, Judge Limardo. We take these expressions as part of their arguments and not as evidence.

In keeping with these parameters, we specifically address those allegations of importance which are presented to us by the individual respondents.

VI

Brunet Justiniano⁶:-

Firstly, Brunet Justiniano questions that the Special Commissioner, Judge Limardo, has deemed proven that

⁶ Besides the documentary evidence, Brunet Justiniano offered the testimony of Atty. William Rodríguez Suárez and Miguel A. Cartagena Flores -rejected by the SIP-, that of Police Major Sebastián Ortiz Lorenzo, captain Domingo Alvarez Díaz and Attys. José C. Aponte Lebrón and Héctor Reichard De Cardona.

he only recommended to Lt. Quiles "burning" undercover agent González Malavé since July 12, 1978. He alleges that this "conclusion reflects the facts partially in regards to this aspect" and that the evidence shows that he made that same recommendation to his immediate superior and head of the prosecutors in the Department of Justice, Atty. Colton Fontán. He relies on Exh. 22 SIP, pp. 201, 217, 232, to wit, part of his testimony before the Senate Committee on the Judiciary. For argument's sake we will assume this fact, without taking it into consideration when evaluating the conduct of Colton Fontán.

We agree with Brunet Justiniano in that he did not have the faculty nor authority *expressly in law* to intervene in the internal procedures of the Intelligence Division of the Police and to impose his recommendation. As a prosecutor, he could only advise said body. The Police are the ones that adopted the decision in regards to "burning" their undercover agents because of the difficulty of recruiting and infiltrating them (T.E. March 24, 1987, Sebastian Ortíz Lorenzo, pp. 21-23; Atty. Aponte, Lebrón, *Id.*, 48).

In view of this circumstance, at best, we can only recriminate his conduct for not having insisted on his recommendation. From the face of it, the situation so warranted it. He came into direct knowledge of the inciting activities of undercover agent González Malavé in the two groups (Anti-Imperialist Forces and Armed Revolutionary Movement), to wit: 1) the placing of a bomb at the 65th Infantry Post Office; 2) the shoot-out at the residence of former governor Muñoz Marín; 3) the attack on the university police station; and 4) the acts of sabotage against property of the WRA through the casting of

chains and molotov cocktails at an electric plant in Hato Rey and the electric lines. In addition, he knew of the proposed kidnapping of the son of Judge Blanca I. Bonilla and the illegal purchase of a shotgun.

On the basis of his previous experience as a prosecutor, he also should have left written indication of his position before beginning his vacations on July 14, 1978. Such omissions, however, cannot be the motive *per se* for attributing to him all the consequences of the events of Cerro Maravilla. It is obvious that the Investigative Division of the Police had agents decided to carry out the operation to its ultimate consequence.

Likewise, we are in agreement in that he showed that ordinarily the prosecutors followed the practice of using the reporters of the police to take the sworn statements of the undercover agents, which, for safe security reasons, in the majority of the cases, were taken outside of the main facilities of the police department and the Department of Justice.

Now then, as a law professional his ethical responsibility changed diametrically once the deaths of Darío Rosado and Soto Arriví occurred.

Aware of it, Brunet Justiniano attacks the conclusion of the Special Commissioner, Judge Limardo, in the sense that upon arriving at the Police Headquarters on the afternoon of July 25, 1978, he met with agent Montañez Ortiz while he was transferring three long weapons from a van and "perceived that in effect he was coming from the Cerro Maravilla operation." He bases it on that during the cross-examination, Montañez Ortiz expressed that there was just one brief hello and "admitted that his

purpose (that of witness Montañez) was to hide his participation in the Cerro Maravilla operation." *He is not right.* Even though Montañez testified that that was his purpose -to hide that he was coming from Cerro Maravilla- evidently he was not successful. Brunet Justiniano himself testified before the Senate Committee on the Judiciary that he "*he under[stood]*" that presumably said agent came from Cerro Maravilla. (Exh. 21, SIP, p. 77).

His predicament that upon taking the sworn statement of agent González Malavé at the Industrial Hospital on July 31, 1978, he did so "in the same circumstances and conditions that he took the. . . [o]f 20th and 27th of June and 12th of July of 1978" is not a valid excuse. To said effect he tells us that "[u]nexplainedly the Honorable Commissioner does not point out that in the taking of the latter the respondent did not obtain the appropriate background and preparation." *The argument loses sight of the fact that as of that date -July 31,- already the deaths had occurred and Brunet Justiniano knew through the press that the police version was in question. Obviously he did not act with the appropriate suspicion that the situation required nor did he adequately prepare prior to taking that sworn statement.* He did not go to the site, nor did he see the photos of the corpses of Darío Rosado and Soto Arriví, nor did he examine the autopsy reports.

For this same reason, he was very negligent in continuing on that occasion the routine or administrative practice of using police stenographers in the sworn statements of the undercover agents. Precisely they were dealing with González Malavé. For Brunet Justiniano he was not a stranger, instead the undercover agent whose activities and leadership he already knew, to the point that two (2) weeks before he

had recommended that he be "burned." He acted unwisely and negligently in taking that statement in the presence of Lt. Quiles. Even more, in using in that stage the stenographer of the police entailed that she would take the stenographic notes, the only record of what was testified. As set out by the Special Commissioner, Judge Limardo, in this way the Intelligence Division of the Police came into direct knowledge of the version which the undercover agent, an eyewitness, even when none of the police who had intervened in Cerro Maravilla had given a statement; in particular on a date in which the action of those agents was publicly questioned.

Even when we accept his thesis that as of July 25, and subsequent dates, his appreciation that agent Montañez was unloading weapons from the Cerro Maravilla operation was not an important fact, certainly that reached a different and vital dimension when Villanueva Díaz was assigned to reinvestigate the case. *Personally knowing that fact, he did not transmit it to Villanueva Díaz.*

Also he did not take action in relation to the unexplainable conflict which arose from the version of the policemen in the "recreation" of the scene on August 2, and the sworn statement which he took on July 31 of González Malavé with respect to: 1) that he heard a "halt" coming from the *inside* of the Rikavisión facilities; and 2) that said agent alluded to the fact that before the shoot-out began, Soto Arriví identified a person "*inside there*". Much more so in view of the knowledge that Brunet Justiniano obtained on August 2, 1978, of the presence of some marks of impact on the interior side of the pipes of the gate at the entrance to Rikavisión.

In view of these circumstances his subsequent feeling that the facts that occurred at Cerro Maravilla "should have been submitted to the consideration of the courts," does not relieve him of his ethical and professional responsibility.

VII

Miró Carrión⁷:

In his defense *Miró Carrión* constantly alludes to his lack of experience and state of subordination (hierarchic obedience) in relation to respondent Colton Fontán. On the one hand, he states that his trip, presence and participation on August 2, 1978 at Cerro Maravilla to "recreate the scene with the police" was upon his own initiative, to then bring as an excuse that the task assigned to him was limited and that the prosecutors really in charge of the investigation were Colton Fontán and Figueroa Vivas. His arguments do not convince us.

The evidence reveals that *Miró Carrión* took an active part in the "investigation." Before him, on August 2, 1978, five (5) sworn statements were taken corresponding to the agents Ríos Polanco, Colón Berrios, Reverón Martínez, Bruno González and Torres Marrero in the "record" time of one half (1/2) hour. The evidence also reflects that in this endeavor he followed a system which did not

⁷ Aside from the documentary evidence, Attys. Charles Figueroa, Ramón A. Llovet García and Reynaldo Arroyo testified on his behalf. As cumulative evidence he presented that of Attys. Max Pérez Preston, Carlos Coll Carpintero, Emilio Duprey, Miguel Valcourt and Manuel Lugo.

stimulate an environment that would guarantee, as far as possible, that the truth would bloom. Said agents offered him, of course, the version that they all already knew as a result of the recreation or prior simulation some minutes before. We conclude that his task was more that of a *pro-forma* type with views to pad a file and give it an official *imprimatur* to the police theory of self-defense.

It was proven *ad nauseam* his grave lack of diligence and competence in "investigating" without an adequate background nor examining the real, documentary and testimony evidence available.

From a reading of the sworn statements which he took on August 7, 1978 of agents Cartagena Flores, Ríos Martínez, Pérez Casillas and Moreno Morales, it appears that these were superficial. We coincide with the Special Commissioner, Judge Limardo, in that same show an "interrogatory which because of his *high suggestive nature*, clearly tended to maintain the version of the facts as given by those other police agents who gave testimony on August 2, 1978."

Further, Miró Carrión lied: 1) in stating that when he took the statements on August 2nd Colton Fontán and Figueroa Vivas were not present; 2) that he didn't see Lt. Quiles Hernández there; 3) that the police remained outside the structure of Rikavisión, while he was individually taking their statements; 4) that a typewriter was used to prepare those sworn statements, knowing that they were stenographic symbols; and 5) that Dr. Ramos Rivera had stated that the corpse of Soto Arriví did not present blows caused by instruments or fists, when the truth is

that said physician only indicated to him that it was a matter to be established by an anatomopathologist.

He incurred further in highly censurable and improper conduct when on June 30, 1983, after having given testimony before the Senate Committee on the Judiciary, he called the stenographer Cintrón Lema to ask her to testify falsely concerning the method followed in the preparation of the testimony of the five agents on August 2, 1978.

Notwithstanding, he is right in that he was not specifically charged, as a charge, that he ignored the designation of Delgado García concerning the bullet impacts on the gate of the fence of Rikavisión. Neither was he specifically charged in that he tried to pressure policeman Quiñones Quiñones [sic] so that he would testify "in favor" of the version of the policeman.

VIII

Colton Fontán⁸ and Figueroa Vivas⁹:

In their respective writs, respondents Colton Fontán and Figueroa Vivas lay out before us -as a common denominator- that Law No. 1 of January 18, 1985 -which created the position of Special Independent Prosecutor- is unconstitutional because of its *ex post facto* application,

⁸ He presented the testimonies of Teresita García, Tomás De Jesús Mangual and of Attys. José E. Vila Barnes, Fernando Vizcarrondo and José M. Aponte Jiménez.

⁹ He did not present any testimony evidence.

deprive [sic] us of the inherent power to discipline lawyers, and that it represents an improper delegation which violates the doctrine of separation of powers. Further, Colton Fontán alleges that he was exonerated by a Commission designated by the Secretary of Justice in an internal administrative proceeding followed by virtue of Law No. 145 of July 20, 1979, which governs the suspension or dismissal of prosecutors. Lastly, Figueroa Vivas sets out that the multiple newspaper, radio and television reports in regards to the events of Cerro Maravilla, the investigations and other publicity have provoked in his person and that of his family distraught, restlessness and pressure, of such a magnitude, that the present complaint constitutes a "cruel and unusual punishment."

Let us examine the merits of these allegations of law, and then, those related to the evidence.

A. Allegations of Law:-

In the first he sustains that Law No. 1 has the constitutional defect of being *ex post facto*. They are wrong.

This statute did not alter nor did it make more onerous, as is alleged, the procedural and substantive rights which we have always recognized in disciplinary actions of lawyers. *See, People v. Lebrón González, supra, p. 96.* It did not create a new procedure. It simply transferred the office of the Solicitor General to that of the SIP the investigative task and of processing the presentation and the processing of the complaint.

Different from what is hinted, the procedure followed in this complaint was surrounded by scrupulous

procedural guarantees and of recognition of rights, sometimes greater than that provided in *Rule 13j* of our Regulation. It was not necessary, nor did separate hearings lie. Let us set out in detail these guarantees.

In that *related to discovery of evidence*, it was place [sic] at the disposition of the respondents for their examination or copying, all the documentation of the SIP in the custody of the Superior Court; the SIP was required to announce and specify each witness that would testify concerning each charge in particular; they were ordered to give copies of all the documents (depositions, interrogatories, etc.) that had a manifestation under oath of the witnesses mentioned before any forum; and the delivery of any exculpatory material.

During the presentation of evidence by the SIP, the Special Commissioner, Judge Limardo, permitted all the respondents to cross-examine the witnesses, even when they did not testify against them nor were they affected by their testimony. The SIP was ordered to tender for their inspection a statement of the witness, whose testimony was eliminated at the request of the SIP, but which the respondents alleged that contained hidden exculpatory material. Eventually, the Special Commissioner determined that the allegation of the respondents was baseless. Further, he *totally* eliminated the testimony of Mr. Manny Suárez, for reason of newspaper privilege when the respondent Villanueva Díaz invoked the right to cross-examine. He ordered the dismissal, *without prejudice*, of the administrative charges formulated by the SIP against witness Celia Cintrón Lema and prohibited that any action be initiated against any witness announced by

the respondents, that for the purpose of protecting their right to produce them in their favor.

On occasion of the presentation of evidence by the respondents, Judge Limardo decreed a recess in the proceedings of two and a half days so that they would have the opportunity to evaluate the evidence presented by the SIP and organize theirs. He allowed them to eliminate a substantial number of witnesses announced without the negative effects of *Rule 16(5) of Evidence*, going into effect, under the allegation that said action was an effort which tended to accelerate the proceedings; he did not authorize the SIP to interview those witnesses; permitted the respondents to change the order of the presentation of evidence; that they substitute announced witnesses on the list; and that one of the respondents utilize a witness announced by the other.

Lastly, before us they had ample opportunity to set out their arguments with the benefit of the transcript of all the oral evidence, which we authorized in spite of the objections of the SIP.

The thesis concerning *improper delegation* is not correct. According to the *Exposition of Motives*, Law No. 1 responded to the necessities of carrying out a complete and impartial investigation of the events of Cerro Maravilla. Due to the fact that in same [sic] may have been involved some officials who carried out criminal investigations (policeman, prosecutors, etc.), it was necessary to eliminate the entire conflict of interest between the investigators and the investigated. The method adopted was

the creation of the SIP, instead of following the alternative of traditional investigative organisms. The respondents do not point out the constitutional proviso which bars this set up and delegation of powers. On the contrary, we have recognized its validity, with limitations, if the need and convenience exist that an autonomous official intervene. *See, People v. Pérez Casillas and Moreno Morales, supra; López v. Planning Board, 80 D.P.R. 646 (1958).*

The "administrative exoneration" and the acceptance of its resignation as Prosecutor by the First Executive on December of 1981, which the respondent Colton Fontán brings as a defense is unmeritorious. This procedure was not a bar for this ethical disciplinary process. *See, In re Victor Gómez Morales, resolved on June 23, 1989; In re Rodríguez Caraballo, 106 D.P.R. 792, 799 (1978).*

Figueroa Vivas bases his argument on *separation of powers* in which the statute deprives this forum "of the inherent power to regulate everything concerning the exercise of the legal profession, including disciplinary jurisdiction." Colton Fontán argues that the "Legislative Power in our system of law cannot grant judicial powers to Special Prosecutors."

It is difficult for us to understand both arguments and detect in what manner the principle of separation of powers has been violated. The preeminence of the judicial action is manifest. It is only necessary to remember that the scope and exercise of our disciplinary jurisdiction has not varied; *the best proof is the present adjudication.*

Finally, the claim of Figueroa Vivas concerning cruel and unusual punishment has no merit. The presentation

and dilucidation of this disciplinary complaint does not fall in to the practices which the Constitution prohibited. *See, People v. Jaimán Torres, 86 D.P.R. 700, 701-702 (1962).*

In so ruling, we are conscious that this type of process generates anguish and uneasiness. The action of itself, as well as the transpiration of time - it is easy to suppose - must have emotionally hurt the desired tranquility which we all desire. *However lamentable that this reality may be, same is the consequence of the minimum rigor in a system of justice oriented towards the search for the truth and the imperative of fixing responsibilities.*

Certainly, ultimately, this scene is more painful for him who does not fulfill his duties as a public officer. All this state of mind is unavoidable; a logical consequence of the illegal and unethical conduct of any person, whether it be a private citizen or an attorney or public official.

B- Allegations Concerning the Evidence:-

Throughout all their writings the respondents Colton Fontán and Figueroa Vivas question the determinations against them adopted by the Special Commissioner, Judge Limardo, on the basis of poor credibility which some of the witnesses should have enjoyed. On multiple occasions their arguments rest on a selective extraction of isolated phrases taken from the testimony of a witness.

This focus is incorrect. *We iterate the norm that in order to weight [sic] credibility it is necessary to make a complete analysis of the testimony, and if it exists, its evaluation together with other testimony and with the documentary evidence.* The difficulty of the arguments of these two

respondents, is that none can deny us that from the beginning there was sufficient objective evidence tending to corroborate the version of driver Ortiz Molina and that of policeman Quiñones Quiñones to wit, the photographs of the bodies of Dario Rosado and Soto Arriví; the bullet impacts on the gate of WRIK-TV, the bullet impacts on the Volkswagen of the firm; etc.

We do not harbor any doubts that the respondents Colton Fontán and Figueroa Vivas incurred, individually and concertedly, in a conduct tending to orient the investigation towards the theory of self-defense of the Police. In this task, they were successful for a limited time. To reach it they improperly intervened with several witnesses and managed to change their testimony. Their conduct was an affront against basic ethical principles. Not only do they deserve our repulsion and censure, but the imposition of the severest disciplinary sanctions. In synthesis, against Colton Fontán there were proven the charges related to the intervention and undue pressure of July 31, 1978, with witness Ortiz Molina; that on August 3rd he suggested to witness Marte Ruiz that contrary to what he informed, he would declare that nobody had shot from the interior of the WRIK-TV facilities, and that he had just heard one volley of shots; and that he created in that same witness a serious fear by asking him to identify the person who asked him about the facts, with the purpose of "taking him out of circulation."

Further, he gave specific instructions to the reporter Cintrón Lema so that in the certification of the sworn statement of Marte Ruiz she would not include him as the prosecutor before whom it had been given. In this way he

intentionally ordered the *alteration* of an important document which belongs to the investigative process.

In regards to *Figueroa Vivas* it is obvious that on August 17, 1978 *he coerced* policeman Quiñones Quiñones and exercised over him undue pressure for him to alter his statement concerning the volleys of shots, a fact that was incompatible with the version of self-defense of the police. Without explanation, he destroyed part of the initial sworn statement which this witness gave on that date.

Further, as combined conduct *Colton Fontán* and *Figueroa Vivas* in the discharge of their prosecutorial investigations on August 17, 1978 offered witness Quiñones Quiñones a job; and on July 26, 1978, without prior notice they showed up at his house in Ponce and they threatened him with formally charging him with several crimes if he did not alter his statement.

It was proven that the two carried out an investigation rift with multiple omissions and deficiencies concerning: 1) the real and objective evidence at the scene (impacts on the gate, Volkswagen, public vehicle of Ortiz Molina, shells of long weapons, trousers full of blood and dirt, at the level of the knees with sand and earth, mask, boots, underwear and shoes); 2) the expert analyses of these objects; 3) the evidence of police aggression which arose from the corpses of the victims Darío Rosado and Soto Arriví (photographs and autopsy of the former); and 4) in regards to the testimony perpetuated during the investigation (origin of the "halt" described by González Malavé on July 31, 1978).

In view of this reality the arguments of Colton Fontán in the sense that in view of the autopsy, the photographs were "secondary evidence" surprise us. The same occurs with his assertion that it is "scientifically established doctrine that the trajectory of a projectile through a body, upon being anatomically established the entrance orifice cannot be an indication of the position in which said body was at the time of receiving the shots."

They also did not give importance to the testimony of Delgado García related with the impacts that appeared on the gate of Station WRIK-TV, in spite of the fact that that information was highly relevant in the search for the truth and further, they omitted to take his sworn statement in order to perpetuate his testimony.

Finally, they published the results of their investigation in a report and they made it public at a press conference held on August 29, 1978. In same they perpetuated the first public cover-up concerning what occurred at Cerro Maravilla. In that conference, Colton Fontán was emphatic in that the "investigation revealed that there was no massacre, beating, nor aggression" (Exh. 74 SIP).

IX

Villanueva Díaz¹⁰:

On his behalf Villanueva Díaz emphasized the fact that the witnesses Delgado, Marte Ruiz and Cartagena

¹⁰ Presented testimony of David Borrero Fuentes, José R. Maldonado, Santiago Rullán Rivera, Mariano Maeso González and, waived by the SIP, that of Atty. W. Rodríguez Suárez and Miguel A. Cartagena Flores.

Flores lied to him; that he did not have before him all the material evidence "other than one or another photograph;" that he never classified as superficial the Colton-Figueroa report; that he also did not manifest to two newspaper men from the San Juan Star his feeling that driver Ortiz Molina had told the truth concerning the two volleys of shots and that "he was his best witness;" and that the statement of agent Andrades was "full of lies."

It would suffice to examine Exhibit 15 SIP to remember that Villanueva Diaz *admitted that he saw* the photographs of the beaten faces of Soto Arrive and Dario Rosado (*Id.* pp. 137-138); that he saw at least eleven (11) of those photos during his investigation (*Id.* 141); that he accepted that there were "aspects which were not investigated fully, which should have had the dedicated attention in the investigative process . . ." (*Id.* p. 119); and that in the Colton-Figueroa report appeared as the product of a superficial investigation which "should, have been more profound efficient," (*Id.* pp. 148-149).

The conduct of Villanueva Diaz – correctly characterized by Special Commissioner, Judge Limardo, as the result of a "rationalization, poor investigative objectivity, strange manner of questioning and speculative" – certainly is *incomprehensible*. When he intervened in the facts of Cerro Maravilla he had had at his disposal fifteen (15) years in the legal profession and seven (7) years of experience as a prosecutor. He cannot deny that his special designation responded to a cry of public unsatisfaction concerning the Colton-Figueroa report. Finally, his endeavor and report were poor, since he ratified all the deficiencies of the prior one. (Colton-Figueroa).

The most absurd thing about his conduct is that having the task of fully investigating the manner in which the events at Cerro Maravilla occurred, having been previously investigated by other prosecutors and high officials of the Department of Justice, he did not fulfill it. In view of the strong indicators – testimony evidence, documents and other real objects, which arose that Colton Fontán, Figueroa Vivas, Brunet Justiniano and others had incurred in professional negligence and conduct contrary to the code of professional ethics. He didn't even take sworn statements, nor made attempts which tended to corroborate, detract or clarify the charges or facts which point out the commission of said acts.

He knew and ignored testimony and objective evidence which raised serious questions concerning the official version of the Colton-Figueroa report. It cannot serve as an excuse the alleged contradictory version of some of the witnesses and their lies. Even though we can't attribute to respondent Villanueva Díaz the gift of clairvoyance, he suffered in his own person some experiences which should have served him as a guide to redouble his efforts in the clarification of the truth. How, if the police followed him, watched him and tried to scare him, did he not communicate this to the Secretary of Justice? Shouldn't these circumstances, by themselves, have made suspicious the unusual interest of the policemen involved? Didn't it worry him that it was a warning? If the police were watching him, didn't he consider the possibility that equal treatment and pressure was being exerted on other witnesses? Finally, why didn't he make it known in his report?

The conduct of Villanueva Díaz ended with the presentation of his report of January 9, 1981 and *simultaneously his resignation*. However, unexplainedly on January 27th he held a press conference. Although he was the only participant he doesn't know upon whose instructions he held it. With his report and that press conference he endorsed the investigation of Colton-Figueroa knowing its serious defects. Even more, in his report he classified as liars key witnesses like Ortiz Molina and Quiñones Quiñones, who were questioning the official police version.

In summary we are convinced that the respondent Villanueva Díaz acted against his own convictions, lent himself to a fraud in regard to the truth of the facts and failed miserably in the special task received.

X

Conclusions and Disciplinary Sanctions:-

Our separate and independent analysis moves us to support, in the basic aspect, the determinations of fact of Special Commissioner, Judge Limardo. Amply supported by the testimony and documentary evidence. There is not a least indication that Judge Limardo has acted with prejudice or partiality, nor that he has committed manifest error in evaluating the evidence.

This evidence reflects that *all* the respondents – some in greater or lesser degree – violated Canon 18, that is, incurred in *gross professional negligence*. They joined the self-defense version of the police. As a result, they carried

out individually or concertedly some investigative interventions of *poor quality* in their attempt they were not very diligent. We are not, then, punishing errors incurred in in good faith (*bona fide*), without the intervention of negligence of gross professional incompetence. They all incurred in *serious* anti-ethical professional conduct permeated, at certain times, by a strange interest that the complete truth should not surface. "We mustn't forget that all professional ethics is a direct flow from the spirit of the laws with the precise view to reinforce because of the logic of their trade, in this case, the trade of the jurist, *within whose postulates what would be acceptable as mere involuntary omissions of the ordinary citizen cannot be so classified in view of the fact that it's professional*. Ethical functions, then, and special characterization of same, is the *quantum of reinforcement which in common law is known as the proper diligence of a good family head*: ethics establishes the generic demand of said principle, in the presence of what would be a mere duty by the common citizen. *This ethical consideration, by way of a specific charge of responsibility and reinforcement of the professional personality, should be understood to constitute the soul of all ethical systems.*" Pablo M. Casado Coca, *Abogacía y Deontología de la Indefensión*, General Law Review, No. 523 (1988), pp. 1682-1683 (emphasis supplied).

In particular respondents Colton Fontán and Figueroa Vivas, more than legitimate professional zeal showed here disproportionate animosity and impermissible persecution against some witnesses and participated in a concerted conspiratory action (Canons 5, 15 and 35). They

ignored vital factors in regards to the reliability of testimony and in that way they avoided reaching, with reasonable certainty the gut of the truth.

Both violated the sacred duty of looking for the truth and of abstaining from suggesting to witnesses that they testify falsely. "The instigation to perjury by an attorney is one of the most serious violations of the Code of Professional Ethics." *In re Pagán Colón*, 100 D.P.R. 223, 227 (1971). "It could not be otherwise since truth and justice are necessary together; and thus it would be intrinsically contradictory to administer justice or claim its action, without respecting the truth . . . It does not meet, therefore, it's [sic] own mission, and betrays it [sic] he who in defense of a cause uses sophisms or false evidence to prevail in his thesis to the detriment of truth, and therefore of justice." Giorgio Del Vecchio, *The Judicial Obligation of the Truth*, Review of the Law Faculty and Forensic Sciences, Year II, Nos. 1-2 (1960), P. 25 (emphasis supplied).

They incurred in serious acts of gross negligence because of the hierarchic positions that they occupied, their conduct obstructed and contributed to delay for years the discovery of what really occurred at Cerro Maravilla. They stained the image of Prosecution and weakened the effectiveness of the important role which they performed in a system of criminal justice (Canon 38). To the illegal physical violence of the police, they added the ethical rape.

We still have to determine individual sanctions.

For "a lawyer submitted to disciplinary complaints his case is unique, personal and un-substitutable. It represents the hope or immediate professional failure of a human being which of itself demands profound reflection

by the judge of all the elements present. As a consequence, among the most difficult matters to evaluate are those related to the problem of professional conduct in the scope of an ethical norm and of the discipline or correction." *In re Labastida, et als*, [sic] 109 D.P.R. 45, 87 (1979) – concurring and dissenting opinion – .

Undoubtedly the respondents – who until the occurrence of these events, enjoyed a well-earned good reputation – trespassed several ethical principles of extreme importance, and should be disciplined. However, we cannot impose on all of them the same sanction. In view of the charges proven and their seriousness, it is necessary to take into account their individual conduct, accumulative effects and so justicially graduate the sanctions.

The conduct and ethical violations having been waived on the basis of the resulting differences previously set out, from lesser to greater severity – we decree the *provisional suspension* from the legal profession of respondent Brunet Justiniano for three (3) years; if Miró Carrión for five (5) years; the *indefinite suspension* of Vilanueva Díaz; and the *permanent separation* of Colton Fontán and Figueroa Vivas.

The corresponding judgment will be entered.

(Signed) *Antonio S. Negrón García*
Associate Justice

IN THE SUPREME COURT OF PUERTO RICO

IN RE)	(
PEDRO COLTON FONTÁN)	- (
OSVALDO VILLANUEVA	)	CE-86-666 (
DÍAZ)	(
AURELIO MIRÓ CARRIÓN	)	( PROFESSIONAL
ANGEL FIGUEROA VIVAS	)	( CONDUCT
JUAN E. BRUNET)	(
JUSTINIANO)	(

JUDGMENT

San Juan, Puerto Rico, February 21, 1991.

For the reasons set out in the preceding opinion, which is made to form an integral part of this, Judgment is Entered and the *provisional suspension* from the legal profession of respondent Brunet Justiniano for three (3) years; of Miró Carrión for five (5) years; the *indefinite suspension* of Villanueva Díaz; and the *permanent separation* of Colton Fontán and Figueroa Vivas is DECREED.

IT IS SO ORDERED BY THE COURT and certified by Mr. Secretary General. Associate Justice Rebollo López did not intervene. Associate Justice Mrs. Naveira de Rodón and Associate Justice Andreu García disqualified themselves.

(Signed) *Francisco R. Agraít Llado*
General Secretary

APPENDIX B

Supreme Court of the United States
No.
A-982

Angel Figueroa Vivas,

Petitioner

v.

Puerto Rico

ORDER

**UPON CONSIDERATION of the application of coun-
sel for the petitioner,**

**IT IS ORDERED that the time for filing a petition for
a writ of certiorari in the above-entitled case, be and the
same is hereby, extended to and including**

September 6th, 1991.

**/s/ David H. Souter
Associate Justice of the Supreme
Court of the United States**

**Dated this 26th
day of June, 1991.**

APPENDIX C

[SEAL]

Office of the Attorney General
Washington, D. C. 20530

SEP. 2, 1982

Honorable Angel Figueroa Vivas
Assistant Attorney General
Department of Justice
Commonwealth of Puerto Rico
P. O. Box 192
San Juan, Puerto Rico 00902

Dear Mr. Figueroa:

I want to express my deep gratitude to you for your participation and interest in the Law Enforcement Coordinating Committee for the District of Puerto Rico. As you know, these committees have been established throughout the country to improve coordination and cooperation among federal, state, and local law enforcement agencies. In the past, the lack of full law enforcement cooperation between the various levels of government has not been in the public interest. I have been gratified by the enthusiasm state and local officials have shown for the opportunity to approach law enforcement on a partnership basis.

On our side, I can assure you that federal law enforcement, from the United States Attorneys through all of the federal investigative agencies, is fully committed to this program. We all recognize that it is only by working together that we can be most effective in the fight against crime.

As the Law Enforcement Coordinating Committees continue to develop in your district and around the country, we will be seeking further ways of improving law enforcement performance. I would ask you to bring to the attention of your committee new and innovative ideas for combatting crime. To the extent such ideas are successfully adopted in your district, we would like to share them nationwide. Likewise, we will provide your committee with information about activities of other committees that may be helpful to you.

I commend you for the time and effort you are devoting to this important endeavor. I believe that we have begun already to reap the benefits of the improved law enforcement that results from better coordination and cooperation. I expect that these gains will increase as the committee continue their operations.

Sincerely,

/s/ William French Smith

William French Smith
Attorney General

APPENDIX D
IN THE SUPREME COURT OF PUERTO RICO

IN RE)	(
PEDRO COLTON FONTÁN)	(
ANGEL FIGUEROA VIVAS	) MC-84-26 (
SANTOS NIGAGLIONI	)	( COMPLAINT
ESTRADA	)	( CONCERNING
AURELIO MIRÓ CARRIÓN	)	( PROFESSIONAL
OSVALDO VILLANUEVA	)	( CONDUCT
DÍAZ)	(

RESOLUTION

San Juan, Puerto Rico, June 5, 1984.

The Senate of Puerto Rico, through its President, Hon. Miguel Hernández Agosto, presented before us on May 30, 1984, under oath a *Report concerning Professional Conduct* based on the investigation carried out by the Committee on the Judiciary of said body in compliance with Resolution No. 91 of February 23, 1981, concerning the events which occurred and subsequent incidents, related to Cerro Maravilla on February 25, 1978.

The same alleges improper conduct against attorneys Pedro Coltón Fontán, Angel Figueroa Vivas, Santos Nigaglioni Estrada, Aurelio Miró Carrión and Osvaldo Villanueva Díaz. All are or have been prosecutors of the Department of Justice. The charges of improper conduct refer to alleged acts and omissions committed in their capacity as members of the Public Ministry.

This Court, as a constitutional forum, by virtue of its inherent faculty of regulating everything related [sic] to

the exercise of the legal profession in its varied aspects,¹ in particular its disciplinary jurisdiction conscious of its

¹ On several occasions we have manifested ourselves concerning the inherent faculty to discipline the members of the judicial profession. *In re Torres*, 30 D.P.R. 267, 268 (1922); *In re Abella*, 67 D.P.R. 229, 238 (1947); *Colegio de Abogados de P.R. v. Barney*, 109 D.P.R. 845, 847-48 (1980).

The procedure to be followed is not inflexible. It suffices that "it be in harmony with the due process of law . . ." *In re Pagán*, 71 D.P.R. 761, 763 (1950).

According to Rule 13 (d)(3) of our Regulation, after receiving a complaint we can "order that an investigation of the matter be carried out by the Solicitor General or the Courts Administration, if same has not yet been done." Ordinarily, the Solicitor General will begin and conduct these proceedings as it be ordered by this Court or the Secretary of Justice. (3 L.P.R.A. § 84 (d)). On occasions, it is the Bar Association of Puerto Rico, an entity that, after investigating *sua sponte* a complaint, presents a report to us and requests its initiation against one of its members (4 L.P.R.A. § 773 (g)). *In re Atty. Frank Valentín González*, dec. on January 23, 1984. When the circumstances so require it, the usual practice is to instruct the Solicitor General immediately to formulate the corresponding complaint.

However, in *In re González Blanes*, 65 D.P.R. 381, 392 (1945) we expressed ourselves concerning our discretion to designate an attorney or entity different to process a complaint.

The jurisprudential trajectory set out is in keeping with the criteria gathered in the *Models Concerning Disciplinary Proceedings*, adopted by many federal courts, among them that of Puerto Rico. These proceedings acknowledge the flexibility necessary and an analogous discretion. See the federal Rule X which provides, for the purpose of substantiating a complaint

(Continued on following page)

duty of "protecting and promoting the independence of the judicial power as a factor of equilibrium in the governmental structure of our system of democratic life" (Canon XIII of Judicial Ethics), adopts the following statements:

1. The differences existing between the Executive Branch and the Senate of Puerto Rico are public inasmuch as far as the reach limitations and duties, of the power of nominating and of confirming, in the pertinent part to the positions of Secretary of Justice and Solicitor General. The attorneys whose professional conduct is questioned in the Report, performed or continue to be tied to the Department of Justice. In these circumstances, for the greater purity of the proceedings, it is not appropriate that we name a member of the Department of Justice to evaluate or try other members or ex-members of the same agency. In consequence, said Department and the Solicitor General of Puerto Rico are relieved from participating and intervening in the process set out further on.

2. We take judicial notice of some of the interventions of the Bar Association and several incidents which originated during the investigation by the Committee on the Judiciary of said body. In these circumstances, the purity of the proceedings also requires a similar emphasis. Therefore, the Bar Association is relieved, as

(Continued from previous page)

in disciplinary procedures, that the Court name the Secretary of Justice of Puerto Rico ("Attorney General") or any other disciplinary agency with jurisdiction, but if said designation is clearly inappropriate, one or more attorneys admitted to litigate in said forum will be appointed.

such, from participating and intervening in the process set out further on.

3. The allegations of improper conduct contained in the report before us are serious and complex. The documentation on which it relies is voluminous. The reputation and professional future of several lawyers is in question. Also the capacity of Judicial Power to comply fully with its responsibility of fomenting at all times the discovery of the truth as an essential basis of justice and ethical axiom.

In light of what has been previously stated, it is imperative that we designate a Panel of Special Examiners, whose task shall be the evaluation, formulation and sustainment of formal charges for improper professional conduct which may be deemed corresponding in this case, if any. The attorneys who will compose the Panel of Special Examiners should enjoy great intellectual and moral solvency.

The Panel of Special Examiners, whose compensation *per diem* or in any other manner, will be fixed by the Chief Justice, will exercise in those proceedings similar powers to those which will be exerted by the Solicitor General of Puerto Rico. The Administrative Offices of the Courts will provide all the cooperation, physical facilities and secretarial and technical assistance necessary and available.

No formal disciplinary proceedings will be initiated unless, having received the report from the Panel by this Court, probable cause is determined according to the procedure established in Rule 13 (e) of our Regulation, [giving] previous opportunity to the respondents to

answer the report within the period provided in Rule 13 (f).

Should probable cause be determined after the process set out, the Panel of Special Examiners, will sustain the complaint before three Special Commissioners, to be designated by this court in due time, who will act *en banc* and will be guided by the procedure [sic] set out in Rule 13 items (i) and (q) of our Regulation.

Designated to form part of the Panel of Special Examiners are, the attorneys whose names are given herein in alphabetical order:

Antonio J. Amadeo Murga
Yamil Galib Frangie
Joaquin Monserrate Matienzo
Plinio Pérez Marrero
Miguel Velázquez Rivera

Notified personally and in writing.

The Court so agreed and Mrs. Secretary General so certifies. Associate Justice Mr. Rebollo López did not intervene.

(Signed) *Lady Alfonso de Cumpiano*
Lady Alfonso de Cumpiano
Secretary

APPENDIX E
COMMONWEALTH OF PUERTO RICO
OFFICE OF LEGISLATIVE SERVICES
CAPITOL BUILDING
P.O. BOX 3986
SAN JUAN, PUERTO RICO 00904

June 11, 1985

Juan R. Melecio, Director of the Office of Legislative Services of the Legislature of Puerto Rico, hereby certifies to the Secretary of State that he has duly compared the English and Spanish texts of Act No. 1 (S.B. 13) of the 1st Session of the 10th Legislature of the Commonwealth of Puerto Rico, entitled:

AN ACT to create the Office of Special Independent Prosecutor to investigate and criminally prosecute the persons who could have committed crimes in connection with the incidents at Cerro Maravilla, etc.,

and finds the same are complete, true and correct versions of each other.

/s/ Juan Melecio
Juan R. Melecio, Director
Office of
Legislative Services

(No. 1)

(Approved January 18, 1985)

AN ACT

To create the Office of Special Independent Prosecutor to investigate and criminally prosecute

the persons who could have committed crimes in connection with the incidents at Cerro Maravilla, and to carry out all pertinent civil, administrative and professional ethics actions with regard to the above; and provide for the creation and operation of his office, and to appropriate funds.

STATEMENT OF MOTIVES

The People of Puerto Rico have deep democratic feelings. As such, they expect their political and judiciary bodies to encourage the highest levels of democratic maturity and of tolerance for opposing ideas, as an indispensable means to attain a productive, secure and peaceful life. Therefore, the People's constant concern should be to achieve and uphold a government whose conduct will guarantee the constitutional rights of all the citizens and preserve their faith in their democratic institutions.

As a result of the death of two "independentista" youths at Cerro Maravilla in Villalba on July 25, 1978, at the hands of the police, and of subsequent actions by the government law-enforcement officials, the confidence of the citizens in their institutions has wavered; encouraging cynicism towards the basic premise of our system, of a just and fair application of the law.

The exceptional circumstances surrounding these incidents have awakened a unanimous clamor for an impartial, efficient and complete investigation to fix the corresponding criminal responsibility for these deaths and the subsequent cover-ups. Said investigation will necessarily involve an examination of the actions of the

highest-ranking officials within the government's criminal investigation hierarchy. The serious irregularities uncovered by the Senate in the previous criminal investigations, emphasize the need to avoid even the slightest shading of conflicts of interest between the investigators and those investigated, and to separate said process from the passions of partisan-politics.

There is a consensus in the country that said investigation must not be carried out by the traditional criminal investigation bodies. It is necessary to guarantee to the people that an investigation will be carried out within the framework of the strictest standards of ethics so that it may regain its confidence in our democratic institutions, and the assurance that no citizen is above the law.

With this purpose, it is hereby proposed to create the Office of Special Independent Prosecutor, who shall be provided with all the powers and resources needed to carry out a complete, impartial and independent investigation of the incidents that took place at Cerro Maravilla on July 25, 1978, the antecedents, and the subsequent cover-ups, and that all persons who could have committed crimes in connection with these facts be criminally prosecuted.

BACKGROUND OF THE SPECIAL INDEPENDENT PROSECUTOR BILL

As a result of the incidents which took place at Cerro Maravilla on July 25, 1978, a public outcry arose for an impartial investigation to be made to acquaint the country with the circumstances by which the deaths of the

"independentista" youths Carlos Soto Arriví and Arnaldo Darío Rosado occurred.

For over five years, the top leaders of the opposing political parties, the Puerto Rico Bar Association, several labor and religious organizations, and the country's Press, claimed that it was necessary to conduct an investigation, disassociated from the entities controlled by the Executive Branch.

The Governor of Puerto Rico at that time, Atty. Carlos Romero Barceló, consistently refused to designate an independent commission to investigate said incidents, alleging that it would be harmful to the organized structures of government. He also pointed out that the people should trust the official investigative processes, as he did.

In accordance with the position of the Chief Executive, the Special Investigations Bureau of the Department of Justice carried out two investigations of the Cerro Maravilla incidents. Both exonerated the members of the Police of Puerto Rico, concluding that they had acted in legitimate self-defense.

However, information was continually made public which contradicted this version of the facts. This engendered doubts in a large sector of the country, as to whether the government was covering-up what really took place.

This situation led the Popular Democratic Party representation in the Senate of Puerto Rico, presided by Senator Miguel Hernández Agosto, to file Senate Joint Resolution No. 1599 on May 9, 1979. Said Resolution proposed the creation of a Special Commission composed

of former Supreme Court Justices, and a position of Special Prosecutor, attached to said Commission, to investigate the Cerro Maravilla incidents. The parliamentary majority defeated said bill.

On October 9, 1980, the Honorable Miguel Hernández Agosto requested Governor Romero Barceló to call a Special Session of the Legislature to approve the designation of a special prosecutor to reinvestigate the case. The proposed prosecutor would be appointed by the Governor in consultation with a group of former Supreme Court Justices or the political leaders of the country. The Governor argued, on the other hand, that said incidents had been investigated excessively.

As a result of the general election, the Popular Democratic Party assumed control of the Senate in January, 1981. The Government of Puerto Rico then initiated the first investigation of said incidents that was not under the jurisdiction of the Executive Branch.

After the public hearings on the incidents at Cerro Maravilla had been initiated, the Governor continued his attitude of flatly discarding a new criminal investigation. In spite of this, in July, 1983, the Secretary of Justice reopened the case and designated a Special Commission composed of several prestigious attorneys of the Island, to supervise the investigation. Said Commission would recommend that a special prosecutor be appointed by the Secretary of Justice. Although the Governor initially expressed his support of the Secretary of Justice's initiative, this official subsequently stepped aside. As a result of this, the Special Commission was dissolved. In the

meantime, the President of the Senate insisted on the statutory creation of a Special Prosecutor.

In view of the interest which the public hearings of the Senate investigation awakened in the people, the Governor appeared before the country on September 8, 1983, to offer the Senate Investigator, Atty. Héctor Rivera-Cruz, the appointment as special investigator for the executive investigation of said incidents. The offer was framed in a violent attack against the Senate investigation. The Governor also demanded that the special prosecutor file charges against the policemen within thirty days after his appointment.

The President of the Senate insisted that instead of an administrative appointment, the office of the special prosecutor to be appointed by the Supreme Court, should be created by law. The Governor flatly rejected said counter-proposal, insisting that Atty. Héctor Rivera-Cruz be designated by the Secretary of Justice.

On September 13, 1983, the President of the Senate filed Senate Bill Number 1077, creating the office of Special Prosecutor so that said official would be guaranteed absolute autonomy. In said bill, the Governor's requirement that the appointment be made by him, was accepted. Although Atty. Rivera-Cruz had not received a formal offer from the Governor as of that date, he stated his willingness to accept the appointment, if the Bill was approved with the guarantees of autonomy in his work. The Governor, on the other hand, stated that he would study the Bill thoroughly, setting forth that the same could be unconstitutional. He reiterated, however, that he considered that said law was not necessary.

During the period of time following the filing of the Senate Bill, the Governor continued his attacks against the Senate hearings, while he challenged the Senate Investigator to accept the position of Special Prosecutor.

The representatives of the minority in the Senate recommended several amendments to S.B. 1077, among which was the provision of a term to file charges, and the limitation of the Special Prosecutor's power to secure evidence, to the specific case of Cerro Maravilla. On October 10, 1983, House Bill Number 1059, similar to S.B. 1077, was filed at the House of Representatives.

During public hearings held by both bodies to consider said bills, the measures were endorsed by the Secretary of Justice, the President of the bar Association, the Dean of the Catholic University's School of Law, and other prestigious attorneys of the Island.

Meanwhile, the Governor insisted that the creation of said office was not necessary. On October 31, 1983, he sent a written offer to Atty. Héctor Rivera-Cruz of the office of Prosecutor, for the first time. The Senate Investigator rejected said offer.

In October, 1983, several policemen who participated in the operation revealed that the theory of legitimate self-defense adopted by the Puerto Rico Police and accepted by the Department of Justice, was false and that a crime had taken place at Cerro Maravilla.

On November 22, 1983, after learning of the contests of said testimonies, the Governor requested a meeting with the President of the Senate, with the purpose of jointly drawing up a bill to create the office of Special

Prosecutor. However, prior to holding said meeting, Atty. Virgilio Ramos, an aide to the Governor, stated that if an agreement was not reached on the bill and the candidate to said office, charges would be filed through the Department of Justice.

On November 25, 1983, Senate Bill Number 1085 was filed, which included all the amendments recommended in the public hearings of the earlier bill. On November 28, House Bill Number 1069 was filed, for the same purpose.

The meeting between the Governor and the President of the Senate was held on the latter date. In said meeting the Governor suggested several amendments to S.B. 1085, committing himself to approve it. At the same time, the Governor called a Special Session of the Legislature to pass said bill.

On November 29, 1983, the Governor submitted an administration bill to both Houses of the Legislature, using S.B. 1085 as a basis. Said bill was submitted to joint public hearings. In said hearings, the bill was endorsed by the Secretary of Justice, the Dean of Interamerican University's School of Law and other renowned attorneys.

On December 13, 1983, the Senate passed the bill with its amendments. The House of Representatives passed it on December 15, 1983. The approval was obtained by voting within party-lines, with the opposition of the minority representatives to the bill.

On December 18, 1983, an article was published in the "El Nuevo Dia" newspaper which stated that "a legal counsel" to the Governor had indicated that the Governor

would veto the bill because the same was unconstitutional and "full of nonsense". The resources granted to the Special Prosecutor were questioned, including that of recruiting personnel without being subject to the Personnel Act, and that of granting contracts without competitive bidding.

The power given to the special prosecutor to grant immunity in civil cases and to initiate actions to disbar attorneys was also objected to. On December 19, Atty. Marcos A. Ramírez, Legal Counsel to the Senate, answered the constitutional allegations raised. On December 20th, the Governor informed that he had ordered a complete study of the alleged constitutional and procedural problems of the bill to be conducted before deciding whether he would approve it. He questioned the powers given to the special prosecutor to grant immunity against administrative actions, to delegate his functions, and to initiate disbarment procedures against lawyers. The Bar Association of Puerto Rico was requested to conduct said study. At the same time, it was informed that the Department of Justice's third investigation was continuing.

On December 29, the Bar Association answered the Governor's inquiry, giving its opinion that the bill creating the office of special prosecutor was constitutional in all its phases and exhorting the Chief Executive to sign said bill.

On January 9, 1984, the President of the Senate informed the Governor that the Senate Investigator would accept the position of Special Prosecutor, should the Chief Executive sign the bill that was passed by the

Legislature. The Governor refused to appoint Atty. Héctor Rivera-Cruz claiming that he had received reports that serious irregularities had been committed in the Senate investigation by the legislators and investigators, in order to obtain false witnesses.

After being challenged by the Investigator to publish the reports he said he had, and after the investigator had filed a complaint before the Supreme Court, the Governor admitted that he had no evidence whatsoever, indicating that his charges were based on news items. The Senate of Puerto Rico issued a vote of censure against the Governor for having made imputations against legislators and the Legislature without evidence. When the Governor admitted that he did not have evidence of any irregularities and indicated that he had not given credibility to the press reports, the Senate Investigator withdrew his complaint. The Supreme Court decided not to exercise its jurisdiction.

The Governor appeared before the People on January 12, 1984, in a televised statement, to inform that he would veto the bill passed by the Legislature. His strongest objections to the bill were related to the powers to delegate functions, to grant civil and administrative immunity, and to initiate disbarment procedures. He stated that he would send a new bill.

On January 13, 1984, the representatives of the parliamentary minority filed S.B. 1094, which contained the Governor's viewpoint of the Special Prosecutor's Office. On that same date, the President of the Senate requested authorization from the Commonwealth Election Commission to answer the Governor's message. Although said

body had authorized the Chief Executive's message, it denied the Senate's request, alleging that it was not a matter of public interest. Said Resolution was appealed before the Superior Court. The Secretary of Justice requested intervention in said suit in opposition to the authorization of said message.

The new bill submitted by the Governor would restrict the powers of the Special Independent Prosecutor even more than the first bill submitted by him. There were twenty-one (21) significant differences between the bill proposed by the Governor and the measure which by the Legislature considered as the best.

Surprisingly, after the Governor had filed said bill, the Secretary of Justice appointed four prosecutors to carry out a third investigation of the Cerro Maravilla events. He alleged that he was doing so in compliance with an order given by the Governor to the former Secretary of Justice.

In February, 1984, the Senate took steps to obtain authorization from the Commonwealth Election Commission to televise the public hearings on Senate Bill Number 1094. These hearings were delayed when a group of electors affiliated to the New Progressive Party contested the Commission's decision authorizing them. The courts of the country found the objections of said citizens groundless and the suit was finally resolved on March 19, 1984.

The televised public hearings began the following day. On that same day, the Governor filed suit against the Senate to paralyze said hearings. Several Senators of the parliamentary minority joined in the suit as well as the electoral commissioners of the New Progressive party

and a candidate for Senator for said Party. The Supreme Court finally resolved the controversy in favor of the Senate.

In spite of this attempt to paralyze the televised public hearings, these were held. The Bill was endorsed by the Chairman of the Evangelical Council, the Bar Association, the Chairman of the Police Members' Association, of former Justice Agustin Mangual, and of the well-known attorney Carmelo Guzmán-Geigel. The Secretary of Justice presented his opposition to the creation of said office in writing. When the Governor was questioned on this position, he stated that he did not believe in the office of the Special Independent Prosecutor either, but that he had followed through, due to the pressure of public opinion.

On March 27, 1984, the Senate passed the bill submitted by the Governor, yielding completely in 18 of the 21 differences. In the remaining three, the Senate amended its position to bring it as close to the Governor's position as possible, without impairing the autonomy of the office. Thus, in the bill that was passed, it was established that the attorneys on whom the Special Prosecutor would delegate his functions could only act following his orders. It was further established that the immunity against civil actions would apply only to actions brought by the government. With regard to administrative immunity, the prior approval of the Governor was required. It was further provided that the Special Prosecutor could not delegate said function and that the employee who had been granted immunity could be relocated in another position. It was also accepted that the Public Service salary schedules would be used as guides to establish the

remuneration of the Special Prosecutor's Office employees.

In spite of all this, the Governor did not sign the bill. On April 30, 1984, he sent a communication to the President of the Senate returning the bill and indicating that the amendments made by the Legislature conferred extremely broad powers on the Special Independent Prosecutor which made the bill unconstitutional.

As can be inferred from the preceding listing of facts, Governor Romero Barceló never accepted the creation of the office of Special Independent Prosecutor to investigate the incidents at Cerro Maravilla and to file all the pertinent criminal charges. On November 6, 1984, the People of Puerto Rico resolved to end the controversy. In compliance with its commitment with the People, the Senate of Puerto Rico, submits this bill, whose approval will guarantee an exhaustive and honest executive investigation of a criminal nature, which will make it possible to fix the criminal responsibility for the deaths which occurred at Cerro Maravilla and its subsequent cover-up, on every level that the responsibility exists.

**BE IT ENACTED BY THE LEGISLATURE OF
PUERTO RICO:**

Section 1. – Creation of the Office

The Office of the Special Independent Prosecutor is hereby created. As soon as this bill is approved, the Secretary of Justice of Puerto Rico shall summon the former justices of the Supreme Court who shall be given the task of recommending possible candidates for the

Office of Special Independent Prosecutor, all of which must be done within a maximum term of seven (7) days.

In the event the former Justices do not submit the list of recommended candidates to the Governor within the term of seven days provided herein, the Governor shall make the appointment without considering their recommendations.

Nothing of what is provided herein, shall be understood as a limitation of the Governor's constitutional right to exercise his nominating power with absolute discretion. The Special Independent Prosecutor shall be appointed by the Governor of Puerto Rico with the advice and consent of the Senate and the House of Representatives of Puerto Rico. The person nominated by the Governor shall not take office until he had been confirmed by the Senate and the House of Representative of Puerto Rico.

Section 2. - Mandate and Jurisdiction

The Special Independent Prosecutor shall have the duty and authority to investigate everything related to the incidents that took place at Cerro Maravilla, on July 25, 1978, to determine what crimes were committed by public officials or by other persons, as well as violations of government regulations and standards of administrative and professional conduct. Once this determination is made, he shall have the duty and the authority to represent the People of Puerto Rico and the Commonwealth in the penal proceedings, and the civil, administrative, and professional conduct actions which may be indicated.

The Special Independent Prosecutor shall investigate and prosecute the crimes and violations of an administrative and professional ethics nature, which may arise in the following areas, without being limited thereto:

- 1) The events of July 25, 1978, at Cerro Maravilla.
- 2) The events which occurred prior to July 25, 1978, but were related to the events of that day.
- 3) The events which occurred after July 25, 1978, and which are related to those events.
- 4) That which took place during the investigation conducted by the Senate of Puerto Rico in connection with the events of July 25, 1978, at Cerro Maravilla.
- 5) Everything related to the actions or omissions of undercover agents in connection with the above items.

Section 3. – Power and Authority

In the exercise of the jurisdiction and authority conferred upon him by this Act, the Special Independent Prosecutor shall have the power and authority which the Department of Justice, the Secretary of Justice, and Attorney General, the Special Investigations Bureau, and any other official or body that has been granted authority under the law to investigate and prosecute violations of criminal law and of administrative and professional standards.

The Special Independent Prosecutor shall have the power and authority for the following, without being limited thereto:

- 1) to appoint and remove the personnel as needed and fix their compensation, without being subject to the personnel laws;
- 2) to enter into service contracts without being subject to regular competitive bidding procedures;
- 3) to carry out investigations of every type of persons and documents related to his mandate, for which he shall have access to the files and records of all the Government agencies;
- 4) to go before the Courts to require that any information which has been denied by any government official, or private citizens, be handed over to him, and question any claim of executive privilege, or any other testimonial privilege;
- 5) to give protection to the witnesses he summons, and to appear before the court to request an order forbidding any conduct that could disturb the peace of the witnesses he summons;
- 6) to grant the witnesses immunity against civil, criminal, or administrative actions, whenever he deems it is needed to carry out his mandate according to the law;
- 7) to require the collaboration of any Commonwealth instrumentality or body to provide him with any resource or assistance he may deem necessary to carry out his mandate effectively;
- 8) to initiate and conduct all proceedings before the Supreme Court to prosecute any illegal or improper conduct on the part of

prosecutors or attorneys in the exercise of their professional duties;

- 9) to initiate and conduct all proceedings before the respective officials and bodies to prosecute any public official for conduct deemed to be illegal or improper in the exercise of his duties;
- 10) to take oaths and sworn statements and to compel, under penalty of contempt, the appearance of witnesses and the production of books, letters, documents, papers, files and any other object which may be needed for a full understanding of the matters under investigation in regard to his mandate;
- 11) to represent the Commonwealth in all matters related to his mandate in which the Commonwealth is a party to, or is interested in, and which are handled at the appeal level or in any other manner before the Supreme Court of Puerto Rico or before the United States Federal Courts;
- 12) to request the Supreme Court of Puerto Rico to grant professional immunity to those attorneys he deems necessary, to fulfill his mandate according to the law.

Section 4. – Special Deputy Independent Prosecutor

The Special Independent Prosecutor shall appoint a Special Deputy Independent Prosecutor who shall assist him in the performance of his duties. In case of absence or temporary disability, the Special Deputy Independent Prosecutor, shall substitute for him and shall exercise the

authority and powers of his office according to the instructions of the Special Independent Prosecutor.

In case of death, resignation or removal of the Special Independent Prosecutor, the Deputy Special Independent Prosecutor shall exercise all the functions, powers and authority of the office until the vacancy is filled and the person appointed by the Governor, with the advice and consent of the Senate and the House of Representatives, takes office.

Section 5. – Delegates of the Special Independent Prosecutor

The Special Independent Prosecutor may delegate his faculties and powers to investigate and prosecute the pertinent criminal, civil, administrative, and professional ethics actions, on the attorneys and officials he may deem necessary. The attorneys may act as agents of the Special Independent Prosecutor in those matters he may determine, and they shall be recognized by the Courts and administrative agencies of the Commonwealth and the United States Federal Courts, as if the Special Independent Prosecutor was personally performing his duties.

Section 6. – Exclusive Jurisdiction

The Special Independent Prosecutor shall have exclusive jurisdiction to investigate and prosecute those criminal, civil, administrative, and professional ethics actions he deems appropriate within the mandate entrusted to him herein, including all those criminal, civil, administrative, and professional conduct actions whose investigation and prosecution had begun before the effectiveness of this Act.

Section 7. – Autonomy of the Position

In the exercise of the faculties and powers specified in this Act, the Special Independent Prosecutor shall not be subject to the supervision and authority of any official and body of the Commonwealth of Puerto Rico.

Section 8. – Reports

1. The Special Independent Prosecutor shall submit progress reports to the Governor and the Legislature every six (6) months regarding compliance with his mandate.

2. Before concluding the duties of his position, the Special Independent Prosecutor shall have to render a report to the Governor and to the Legislature on the results of his mandate. This report shall include a complete and detailed description of the actions carried out by the Special Independent Prosecutor, including a list of all the cases investigated and prosecuted, and the reasons he had for not bringing suit against persons whose conduct may have been related to his mandate.

3. The Special Independent Prosecutor shall submit to the House of Representatives or to the Senate any information which could constitute reasonable grounds to initiate an impeachment or expulsion process.

Section 9. – Grounds and Procedures for Removal

The Special Independent Prosecutor may only be removed from office for the following reasons:

1. immoral, illegal or reprehensible conduct
2. incompetence or manifest professional unfitness in the performance of his duties and functions
3. conviction for any felony or misdemeanor implying moral turpitude
4. mental or physical disability
5. unreasonable retention in office even after having concluded all the duties of his mandate
6. dereliction of duties.

He may only be removed from office by the presentation of charges by the Governor or any of the presidents of the Legislative Bodies, before the Supreme Court of Puerto Rico, which shall follow Due Process of Law, and shall issue the corresponding judgment.

Section 10. – Term of Office

The Special Independent Prosecutor shall stay in office until he renders a final report to the Governor and to the Legislature, as described in Section 8 of this Act.

Section 11. – Appropriations of Funds

The sum of \$750,000.00 is hereby appropriated to the Special Independent Prosecutor for the initial organization of his office and for the activities to be carried out during the present fiscal year. In subsequent years the Special Independent Prosecutor shall present his budget directly to the Legislature without having to obtain the prior approval of the Budget and Management Office.

Section 12. – Compensation

The Special Independent Prosecutor's compensation may be established by means of a salary or a service contract. The compensation formula shall be mutually agreed upon by the Special Independent Prosecutor and the Secretary of Justice.

Section 13. – Separability of the provisions

Any provision of this Act which may be declared null or unconstitutional by a Court of competent jurisdiction, shall be separated from the Act without affecting the other provisions.

Section 14. – Effectiveness

This Act shall take effect immediately, with the exception of Section 6, which shall take effect when the Special Independent Prosecutor takes office.

DEPARTMENT OF STATE I DO HEREBY CERTIFY: That this is a true and correct copy of the original approved and signed by the Governor of the Commonwealth of Puerto Rico on January 18, 1985. As of date: June 12, 1985

/s/ _____
Acting Assistant Secretary
of State

FOR OFFICIAL USE
NO FEES COLLECTED

APPENDIX F
IN THE SUPREME COURT OF PUERTO RICO

IN RE)	(
PEDRO COLTON FONTAN	)	( COMPLAINT
ANGEL FIGUEROA VIVAS	)	( CONCERNING
SANTOS NIGAGLIONI	)	MC-84-26 (PROFESSIONAL
ESTRADA	)	( CONDUCT
AURELIO MIRO CARRION)	(
OSVALDO VILLANUEVA)	(
DIAZ)	(
)

RESOLUTION
San Juan, Puerto Rico, March 14, 1985.

On the 11th of this month the Panel of Special Examiners, appointed by this Court on June 5, 1984 to evaluate and if necessary file and support the charges against attorneys Pedro Colton Fontán, Angel Figueroa Vivas, Santos Nigaglioni Estrada, Aurelio Miró Carrión and Osvaldo Villanueva Días, district attorneys who participated in the investigation of the occurrence at Cerro Maravilla, have filed a motion requesting, among other things, to determine if according to that provided in Law No. 1 of January 18, 1985 this Court considers that it should modify in any manner the assignment made to the aforementioned panel. In its article 2 of Law No. 1 of January 18, 1985 is stated:

"The Special Independent District Attorney will have the duty and authority to investigate all that related to the incidents of Cerro Maravilla that occurred on July 25, 1978 to determine that those violations were committed by

public officers or other persons, as well as violations to governmental regulations and good administrative and professional conduct rules.

Once said determination has been made, it will have the duty and the authority to represent the People of Puerto Rico and the Commonwealth [sic] of Puerto Rico in the legal proceedings and in civil, administrative and professional conduct suits as provided."

In article 3, enclosure 8 of the Law is included, among others the faculty of the Special Independent Prosecutor to:

"initiate and carry out all the procedures before the Supreme Court to process any illegal [sic] or improper conduct of the district attorneys or attorneys in the performance of their professional functions;"

Finally article 6 provides that:

"The Special Independent Prosecutor will have exclusive jurisdiction to investigate and process those criminal, civil, administrative and professional conduct acts that he deems appropriate within the assignment herein given, including all those criminal, civil and administrative and professional conduct acts whose [sic] investigation and processing might have been initiated prior to the effectiveness of this Law."

Pursuant to the terms of the aforesigned [sic] law and to prevent undue duplicity or conflicts in the investigation or ulterior process in this matter, the Court deems it advisable to terminate the assignment given to the

Panel of Special Examiners and to request that all documents they might have be forwarded to the Special Independent Prosecutor. The Special Independent Prosecutor will assume from this day on before this forum all the responsibilities of the Panel of Special Examiners regarding the disciplinary action, if any, against the aforementioned attorneys or those against who finally charges should be filed as a result of the performance of their functions in the investigation of the incident at Cerro Maravilla.

The Court wishes to states [sic] its recognition and appreciation to the outstanding attorneys, Antonio J. Amadeo Murga, Yamil Galib Frangie, Joaquín Monserrate Matienzo, Quintín Morales Ramírez and Miguel Velázquez Rivera who so unselfishly and with sacrificing of their busy time, assumed the task that this Court assigned them on June 5, 1984.

So was agreed by the Court and certified by the General Secretary. Associate Judge Mr. Rebollo did not intervene.

signed Lady Alfonso de Cumpiano
General Secretary

APPENDIX G
IN THE SUPREME COURT OF PUERTO RICO

IN RE)
PEDRO COLTON FONTAN) NO. MC-84-26
SANTOS NIGAGLIONI ESTRADA) CONCERNING:
AURELIO MIRO CARRION) PROFESSIONAL
OSVALDO VILLANUEVA DIAZ) CONDUCT
ANGEL FIGUEROA VIVAS)

)

- INFORMATIVE MOTION -

TO THE HONORABLE SUPREME COURT:

COMES NOW the Special Independent Prosecutor and respectfully expounds:

1. Through resolution of March 14th of the year in progress this Honorable Court determined that the office of the Special Independent Prosecutor should assume, from said date, "the responsibilities of the Panel of special Examiners with regards to disciplinary action if any, against the aforementioned attorneys or those others against whom it might finally be appropriate to file charges against in this Court . . . "

2. The "responsibilities of the Panel of Special Examiners" to which this said resolution refers, arise from another resolution of June 5, 1984 in which it provided that said Panel would proceed to the "evaluation, formulation and support of formal charges for their improper conduct as they may deem appropriate in each case, if any."

3. For the purpose of this Honorable Court knowing the state of progress of the attempts which have been carried out by the Office of the Special Independent Prosecutor in the discharge of the first stage of its assignment - evaluation - we report the following:

a. In referring to this office the present matter by this Honorable Court, we proceeded to the consideration, evaluation and designation of the persons who would assist the Special Independent Prosecutor in this task. Given the importance and seriousness of the matter, this process ended barely one month ago. Simultaneously, we proceeded to obtain copy of the record and to require of the Panel of Examiners the files which contained the exhibits which supported it. The process of compiling these documents was finished last month.

b. Interviews were held with several of the members of the Panel of Special Examiners for the purpose of obtaining their opinion and conclusions regarding the task which they had carried out thus far.

c. A report of February 17, 1984 prepared by Atty. Agustín Mangual at the request of the then Secretary of Justice, Atty. Carmen Rita Vélez, in which it concluded that it was not appropriate to file charges before this Honorable Forum against Attys. Santos Nigaglioni Estrada, Osvaldo Villanueva and Juan E. Brunet was carefully studied.

d. The analysis of documents which support the complaint filed before this Honorable Forum was begun and it has been practically concluded. these and other matters which have had to be evaluated, comprise over (10,000) ten thousand pages.

e. Some of the acts performed by the attorneys object of the complaint, present problems of professional conduct very peculiar and in some cases, problems of first impression before this Honorable Forum. That, because the immense majority of problems of professional conduct of prosecutors is related to the abuse and misuse of power to the detriment of the accused for the purpose of obtaining convictions in an illegal manner. In this case, the improper professional conduct was for benefiting and protecting the possible authors of crimes. It presents, further, because of the conduct of some of the lawyers charged, several problems of professional conduct very particular to the attorney officials or employees of the government. In light of this, we have proceeded, and it is still in progress, an investigation of the law related to the problems previously mentioned.

f. A visit has been made to places related to the facts with the purpose of better understanding the situation presented.

g. Already many of the witnesses have been identified who will support the charges of improper conduct against the lawyers object of this incident. Extensive interviews have been held also with a substantial number of these. These interviews have cast very valuable information which tends to strengthen or clarify several of the charges or to establish additional incidents of probably improper professional conduct. We are about to interview new witnesses who have arisen and who apparently can provide other evidence not considered in the report already before this Honorable Court.

h. Once the interviews are concluded with these witnesses we will proceed to invite the concerned attorneys to express whatever they deem necessary to this incident.

4. The present effort is being carried out with the utmost deliberation and keeping in mind what was expressed by this Honorable Court in its Resolution of June 5, 1984 regarding the conduct charge as "serious and complex." The results of what has been carried out up to this moment cast an immense probability that this office will file a report for the purpose that this Honorable Court may make a determination of probable cause concerning the conduct, which should it be proven, would entail serious consequences to the reputation and professional future of the attorneys object of the incident. Said report will be prepared and presented as soon as the present stage of evaluation and investigation is concluded, all of which is estimated should take a period which will not exceed 60 days.

WHEREFORE, it is respectfully prayed of this Honorable Court that it take notice of what has been reported herein and make whatever determination it deems appropriate.

RESPECTFULLY SUBMITTED.

CERTIFICATE is hereby made that on this same date I am sending copy of this writ to Atty. Pedro Colton Fontán, D-F-114 Street, Mansiones de Villanova, Río Piedras, P.R.; Atty. Aurelio Miró Carrión, Triguero St. 939, Urb. Country Club, Río Piedras; Atty. Osvaldo Villanueva Díaz, P.O. Box 3979, Carolina, P.R., 00628; Atty. Santos Nigaglioni Estrada, W-737 St. Fourth Extension, Urb.

Perla Del Sur, Ponce, P.R., 00731; Atty. Juan E. Brunet, Chihuahua St. 1692, Venus Gardens, Río Piedras, P.R. 00926; and Atty. Angel Figueroa Vivas, 30-T-12 St. Ciudad Universitaria, Río Piedras, P.R.

At San Juan, Puerto Rico, this 7th day of August, 1985.

WILLIAM FRED SANTIAGO
Special Independent Prosecutor

(Signed) *MRSzendrey*
MARICARMEN RAMOS DE
SZENDREY
DELEGATED DISTRICT ATTORNEY
P.O. Box 1297
Hato Rey, PR 00919-1290

APPENDIX H
IN THE SUPREME COURT OF PUERTO RICO

IN RE	)	NOS.
PEDRO COLTON FONTAN	)	MC-84-26
OSVALDO VILLANUEVA DIAZ	)	MC-85-28
AURELIO MIRO CARRION)	
SANTOS NIGAGLIONI ESTRADA	)	CONCERNING:
ANGEL FIGUEROA VIVAS)	
JUAN E. BRUNET JUSTINIANO	)	PROFESSIONAL
	)	CONDUCT
	_____)

MOTION

TO THE HONORABLE SUPREME COURT:

COMES NOW the Special Independent Prosecutor
and respectfully states:

1. Upon our return from a brief summer recess we
have had the opportunity of examining the answers
which the attorneys object of this incident have presented
to the reports filed by this Office.

2. A study of said answers reflects that some of
them present controversies of fact, denying or affirming
the recount which was made in the aforementioned
reports. On occasions some of the controversies of facts
which have been created are not wholly relevant or mate-
rial to the fundamental facts which would give rise to the
formulation of disciplinary charges. On other occasions
the respondent attorneys do not deny some of the facts,
instead they raise affirmative defenses by way of a
motion to dismiss.

3. The answers of the respondent attorneys far from diminishing the complexity of the present case accentuate it even more and attempt to demonstrate in an even clearer manner the seriousness of the matters which are being discussed in these incidents.

4. In view of this situation and with the purpose of trying to simplify the very complex task of identifying the really pertinent facts and appreciating what is relevant for the possible formulation of disciplinary charges, we understand that it would be highly convenient that we be permitted to present to this Honorable Court a series of proposed specific charges since in this manner the Honorable Court would be able to evaluate one by one said proposals and utilize them as guidelines for the determination of probable cause which is presently before its consideration.

5. In the eventuality that we are granted the permission we are herein requesting and in view of the fact that we understand that the proposal of charges with all probability will turn out to be numerous, we respectfully request that we be given a period of no less than thirty (30) days to present them.

WHEREFORE, it is respectfully prayed of this Honorable Court that we be granted the permission herein requested to present proposals of specific charges in these incidents and that to carry out that task we be given a period no smaller than thirty (30) days.

RESPECTFULLY SUBMITTED at San Juan, Puerto Rico, this 19th day of August, 1986.

CERTIFICATE is hereby made that on this same date I am sending copy of this writ to Atty. E.L. Belén Trujillo, P. O. Box 20682, Río Piedras, Puerto Rico 00925; Atty. Elfren Bernier, W Street #737, Perla Del Sur Urb., Ponce, PR 00731; Atty. Angel Figueroa Vivas, Paris St. 243, W-1313, Hato Rey, PR 00917; Atty. José A. Feliciano, Cond. Cooperative Plaza, Suite 503, Tower A, Ponce de León Avenue 623, Hato Rey, PR 00917; Atty. Elí B. Arroyo at GPO Box 2406, San Juan, Puerto Rico 00936 and Atty. Wilfredo Figueroa, Condominium Banco Cooperative Plaza, Suite 503, Tower A, Ponce de León Avenue 623, Hato Rey, Puerto Rico 00917.

ALEJANDRO SALGADO RIVERA
SPECIAL INDEPENDENT
PROSECUTOR

(Signed) *MRSzendrey*
MARICARMEN RAMOS DE
SZENDREY
DELEGATED DISTRICT ATTORNEY
P.O. Box 1297
Hato Rey, PR 00919-1290
Tels. 766-0480 & 766-2466

APPENDIX I
IN THE SUPREME COURT OF PUERTO RICO

IN RE)	(
PEDRO COLTON FONTAN)	(
ANGEL FIGUEROA VIVAS	) MC-84-26	(
SANTOS NIGAGLIONI	) MC-85-28	(
ESTRADA	)	( PROFESSIONAL
AURELIO MIRO CARRION	)	( CONDUCT
OSVALDO VILLANUEVA)	(
DIAZ)	(
JUAN E. BRUNET)	(
JUSTINIANO)	(

RESOLUTION

San Juan, Puerto Rico, October 7, 1986.

I

The Senate of Puerto Rico, through its President, Hon. Miguel Hernández Agosto, has presented to us on May 30, 1984, a Report Concerning Professional Conduct, in which the improper conduct of attorneys Petro Coltón Fontán, Angel Figueroa Vivas, Santos Nigaglioni Estrada, Aurelio Miró Carrión and Osvaldo Villanueva Díaz is alleged. On June 5, 1984 we designated a Panel of Special Examiners whose assignment would be the evaluation, formulation and presentation of formal charges for improper professional conduct which they may deem appropriate, if any.

We further, provided that the formal disciplinary procedures would not be initiated unless, after receiving the report of the Panel of Special Examiners, probable

cause was determined according to the procedure established in Rule 13(e) of our Regulation, having given a prior opportunity to the respondents to answer same.

On March 14, 1985 we relieved the Panel of Special Examiners and their tasks and responsibilities were transferred to the Special Independent Prosecutor, a position created by Law No. 1 of January 18, 1985, 3 L.P.R.A. 90 nt.

On April 17th, the Senate of Puerto Rico broadened its report to include a complaint for Professional Conduct against attorney Juan E. Brunet Justiniano. We considered both matters.

On December 4, 1985, the Special Independent Prosecutor submitted a Partial Report concerning the professional conduct of the attorneys Pedro Coltón Fontán, Angel Figueroa Vivas, Santos Nigaglioni Estrada and Juan E. Brunet Justiniano. On April 1st, 1986, [it] submitted a Complementary Report concerning the professional conduct of attorneys Aurelio Miró Carrión and Osvaldo Villanueva Díaz. On May 6, 1986 we requested that the Special Independent Prosecutor submit copies of its reports to each one of the attorneys involved.

On October 31, 1985, June 26, and July 10, 1986 we allowed all the attorneys who were object of the reports to obtain copies of their statements and examine in the office of the Special Independent Prosecutor all the exhibits made reference to in the reports submitted to this Court.

Following the procedure set out by the original Resolution of June 5, 1984, we granted a period to those attorneys so that they could answer. At different times we

broadened same at their request or that of the Special Independent Prosecutor. All the attorneys involved have submitted their answers to the reports of the Special Independent Prosecutor. The matter was submitted with the writ filed by the Special Independent Prosecutor on September 19, 1986.

II

The reports, their answers and other documents having been evaluated, after the corresponding process, the following statements are entered:

- 1) We decree the dismissal and filing of the complaint against attorney Santos Nigaglioni Estrada and;
- 2) the Special Independent Prosecutor is ordered to proceed to file disciplinary charges against attorneys Pedro Coltón Fontán, Angel Figueroa Vivas, Aurelio Miró Carrión, Osvaldo Villanueva Díaz and Juan E. Brunet Justiniano.

The Court so agreed and the Interim General Secretary so certifies. Associate Justice Mr. Rebollo López did not intervene because he was absent due to illness. Associate Justice Mrs. Naveria de Rodón disqualified herself.

(Signed) *Herberto Pérez Ruiz*
Herberto Pérez Ruiz
Interim General Secretary

APPENDIX J
IN THE SUPREME COURT OF PUERTO RICO

IN RE))	(
PEDRO COLTON FONTAN	)	MC-	(
ANGEL FIGUEROA VIVAS	)	86-666	(
SANTOS NIGAGLIONI	)		( COMPLAINT
ESTRADA	)		( CONCERNING
AURELIO MIRO CARRION	)		( PROFESSIONAL
OSVALDO VILLANUEVA	)		( CONDUCT
DIAZ)		(

RESOLUTION

San Juan, Puerto Rico, December 15, 1986.

Having seen the answers to the complaint filed against the attorneys Pedro Colton Fontán, Osvaldo Villanueva Diaz, Aurelio Miró Carrión, Angel Figueroa Vivas and Juan E. Brunet Justiniano, Superior Court Judge, Hon. Abner Limardo is appointed as Special Commissioner so that before the parties hear and receive evidence that they might offer, having the witnesses testifying under oath.

If any evidence is objected, it will be admitted, stating the basis for the objections that are presented against it and once all the evidence is submitted, it will be the duty of the Special Commissioner to duly certify and file it with the Secretary of this Court with his conclusions of facts. The Secretary and the Marshal of this Court will assist the Special Commissioner in these assignments, and he must set a hearing as soon as possible.

App. 201

So was agreed by the Court and certified by the General Secretary. Associate Judge, Mrs. Naveira de Rodón inhibited herself.

Bruno Cortes Trigo
Secretary General

APPENDIX K
IN THE SUPREME COURT OF PUERTO RICO

IN RE)	
PEDRO COLTON FONTAN	)	NO. CE-86-666
OSVALDO VILLANUEVA DIAZ	)	CONCERNING:
AURELIO MIRO CARRION	)	Professional
JUAN E. BRUNET JUSTINIANO	)	Conduct
ANGEL FIGUEROA VIVAS)	

REPLY

TO THE DOCUMENT OF THE SIP TITLED
"COMMENTS AND RECOMMENDATIONS CONCERN-
ING THE CONCLUSIONS OF FACT"

TO THE HONORABLE SUPREME COURT:

COMES NOW the co-respondent Atty. Angel Figueroa Vivas, through his undersigned attorney, and very respectfully states, alleges and prays:

Reply to:

I- "Procedural Background to the Conclusions of Fact of the SIP."

The alleged guarantees and protective measures to which the SIP makes reference, cannot have the effect which it proposes, when they did not supply the herein appearing party, Atty. Angel Figueroa Vivas, exculpatory evidence, alleging that the SIP did not possess it, in spite of the knowledge that it had of it. Further the prior statements of the witnesses who were presented in the hearings as prosecution witnesses were not provided before hand; and even statements from persons who at the time of the hearing, had already died, and of witnesses who did not testify at the hearings, for which reason they were not

available for cross-examination were admitted with the timely objection of the herein appearing party.

Reply to:

A- "DISCOVERY PROCEDURE MEASURES"

1- From the documentation available in the Clerk's Office of the Superior Court of San Juan, it appears that a countless amount of documents supplied by the Senate of Puerto Rico contain blank pages, this being demonstrative, that they were deleted. When copies of these were requested of the SIP, they were not supplied, and they refused to tender them for various reasons. All of this indicates that the evidence favorable to the herein appearing party was suppressed. In contravention of the Order of the Honorable Commissioner, the SIP did not deliver the exculpatory evidence to which Atty. Angel Figueroa Vivas had a right to.

- a- The testimony of the witness Ms. Teresita García, who had been interviewed on several occasions was known to the SIP, thus they knew that her testimony was favorable to the herein appearing party Atty. Angel Figueroa Vivas. Her testimony contradicted the statement of ex-police officer Jesús Quiñones, concerning the alleged pressures exerted on him at his house and concerning the circumstances and the manner in which the statement of August 26, 1978 was taken.
- b- In spite of multiple efforts carried out by the herein appearing party, Atty. Angel Figueroa Vivas, the SIP never delivered the statement taken of Mrs. Carmen

Aledo, before Atty. Héctor Rivera Cruz on September 8, 1981, in the Senate.

- 2- The guideline was established by the Honorable Commissioner, that the witnesses would be notified, by the SIP, to prove each charge to each co-respondent.

The Honorable Commissioner further established that any witness not announced against a co-respondent, could not be used against him.

This guideline was breached, and in the Report submitted by the Hon. Commissioner, which constituted proof against the respondents, included testimony of witnesses who were not announced. Other persons who were not announced as witnesses, nor did they appear at the hearings, as was the case of ex-lieutenant Julio C. Andrades, constituted evidence against the respondents.

Even more unusual, was the acknowledgement of statements of persons who had died prior to the hearings, as was the case of Mr. Tomás Centeno, utilized to corroborate statements made by ex-lieutenant Julio C. Andrades, who also was not a witness. The statement of Mr. Alejandro González Malavé was also admitted (See end of page 85 of the Report of the Hon. Commissioner).

- 3- The SIP alleges that the delivery of copies of every document that had a sworn manifestation of the announced witnesses was "ordered and not objected. This included statements made before the Senate."

The SIP knows that this statement is incorrect and it has skirted the truth in asserting that it

delivered the prior statements of the announced witnesses.

As has been averred previously, the SIP refused to deliver the statement made by Mrs. Carmen Aledo before the Senate, September 8, 1981. Further, the statements which they did tender, had many pages in blank; the statement of Mr. Miguel Marte Ruiz, presented before the SIP, July 5, 1985 same was amended November 12, 1985 before the SIP itself, was delivered with 23 pages in blank (See Exh. 91 of SIP). The appearance before the SIP of Mr. Marte is justified only 5 months after he gave his statement, to make false accusations, to Atty. Angel Figueroa Vivas, as the witness himself testified in the hearing.

- 4- In spite of the statement made by the SIP, that they waived a great deal of the material in sworn statements which had been granted protection by the Hon. Court, they never delivered the prior statements of Mrs. Carmen Aledo and the witness Ms. Teresita García, given before the Senate on September 8, 1981.

The SIP had knowledge, or should have had of the content of said statements, and it had to deliver them to Atty. Angel Figueroa Vivas, since it was exculpatory evidence, according to the order of the Hon. Commissioner.

- 5- The SIP was ordered to tender all exculpatory material, but it never tendered it, alleging that they had no knowledge that any existed.

The SIP did not adhere to the truth it informed the Hon. Commissioner, that no exculpatory evidence existed, having knowledge of or should have had knowledge of the statements given before the Senate by the witnesses Mrs. Carmen Aledo and Ms. Teresita García, on September 8, 1981 before Atty. Héctor Rivera Cruz. Further, the SIP interviewed Ms. García on several occasions thus it had to have knowledge of what was being charged.

- 6- The herein appearing party, Atty. Angel Figueroa Vivas, did not present any witness, since he understood that the SIP had not proved any charges against him.

Further, one of the announced witnesses, Atty. Héctor Rivera Cruz was on a trip to the Republic of China, according to information, and further the SIP had opted to not present Atty. William Rodríguez. Atty. Rivera Cruz was the person who had taken the sworn statements from the witnesses Mrs. Carmen Aledo and Ms. Teresita García. In the beginning of the Senate investigation, Atty. Héctor Rivera Cruz had interviewed at the offices of the Puerto Rico Police, at that time, Alejo Maldonado and Julio César Andrades, convicts today in the federal jurisdiction; and who were the object of investigations on the part of the Special Investigations Bureau of the Department of Justice of Puerto Rico, directed at that time by Atty. Angel Figueroa Vivas.

- 7- In the pre-hearing conferences no agreements were reached, inasmuch as the SIP pretended that evidence which was inadmissible be

stipulated, as was and are statements of persons who were not available to be cross-examined and other evidence which was totally inadmissible *per se*. From the evidence admitted by the Hon. Commissioner, with the objection of the herein appearing party, among others are the statements of deceased persons, as was that of Alejandro González Malavé and Tomás Centeno, and of other persons who were not witnesses at the hearings, in addition to even newspaper clippings which were admitted.

Reply to:

B- "Measures concerning Immunity of the SIP"

Co-respondent Angel Figueroa Vivas, never requested any meeting to discuss any aspect concerning immunity. The SIP in an unreasonable manner, contrary to the rights guaranteed by the Constitution of the Commonwealth of Puerto Rico and the United States of America, initiated a campaign in the newspapers of general circulation in Puerto Rico, where it threatened that it was going to file charges against the herein appearing party. This occurred during the month of December of 1986 and January of 1987. The order of the Honorable Commissioner, of January 20, 1987, was in response to a claim from the respondents concerning pressures of the SIP.

The process to which the herein appearing party, Atty. Angel Figueroa Vivas has been submitted by the State, is one of such nature, that it is oppressive and unreasonable and it is affecting his honor, his reputation and that of his entire family. It is a process which has been prolonged

for such an extensive period of time that it constitutes an anxiety for the respondent and his family and an inhuman punishment.

The exposition of motives of Law #1 of January 18, 1985, evidences the purely political focus of this entire process. The Hon. Commissioner was asked to take judicial knowledge of said exposition of motives, by the herein appearing party Atty. Angel Figueroa Vivas.

Reply to:

C- "Measures during the Presentation of Evidence by the SIP"

1- On the basis of the guideline established by the Hon. Commissioner, that any witness not announced against a co-respondent would not constitute evidence against him, the respondent Atty. Angel Figueroa Vivas did not cross-examine most of the witnesses against him who were not announced. However, statements of witnesses who were not announced, with the objection of the herein appearing party, were admitted and did constitute evidence against him; for example the statement of ex-lieutenant Julio César Andrades and of the deceased Alejandro González Malavé and Tomás Centeno.

At page 4, paragraph 4 of the Report of the SIP, the incident of the prosecution witness Celia Cintrón Lema is mentioned, but the charges made by her against the prosecutors for the SIP are omitted, in the hearings before the Hon. Commissioner. The prosecution witness Celia Cintrón Lema, made charges, ranging from fabrication of evidence to undue pressure, by prosecutors of the SIP, as

was attested to by the witness under oath. The Hon. Commissioner reserved his determination in regards to these charges.

Reply to:

D- "Measures During the Presentation of Evidence of the Respondents according to SIP"

- 1- A recess was requested, by the respondents, after more than one month of hearings wherein the SIP presented its evidence. Atty. Angel Figueroa Vivas, due to the fact that he understood that none of the charges against him had been proven, did not present any witness, and further, for the reasons previously set out, it was decided only to submit the documentary evidence, which could be evaluated by the Honorable Court.
- 2- As has been set out previously, due to the fact that the SIP had not proven any of the charges against co-respondent Atty. Angel Figueroa Vivas; and in order to accelerate the proceedings, the SIP announced to the Honorable Commissioner that it would waive several witnesses, among them one against the herein appearing party. The number of witnesses to be presented was re-evaluated and due to the fact that some of them were not available, an agreement was reached before the Honorable Commissioner, that they would not be presented.
- 3- The Hon. Commissioner had the discretion and he so exercised it during the presentation of the evidence of the respondents in establishing the order of same.
- 4- Atty. Angel Figueroa Vivas only presented documentary evidence in his favor, since

from the evidence presented by the SIP no acts contrary to law or the Code of Professional Ethics by the herein appearing party was demonstrated.

- 5- The herein appearing party, in view of the repetitive statements of the SIP, answers that it did not present any witness, due to what has been previously stated.
- 6- Co-respondent Atty. Angel Figueroa Vivas, did not make his, any witness announced by other co-respondents.

The Honorable Supreme Court, provided through its Resolution dated October 31, 1985 that "While it is true that Rule 13 of the Regulations of this Court does not expressly authorize the discovery of evidence in this stage of the proceedings, the Court deems it indispensable within the special circumstances of this matter. Given the nature of the investigation, its complexity and the fact that the position assumed by the investigators affects the interests and rights of the attorneys investigated"

Co-respondent Angel Figueroa Vivas, as has been previously stated, was not supplied with any previous statements of witnesses presented by the SIP in the hearings, in spite of their having been requested on numerous occasions, and it having been so ordered by the Hon. Commissioner. Further the SIP was requested to provide the statements made by co-respondent Atty. Angel Figueroa Vivas, and the same were not submitted allegedly due to their having been misplaced. Only one, presented before the SIP, was notified.

Further, as had been set out in a Motion Concerning Constitutional Questions, the herein appearing co-respondent understands that the SIP does not have the right at law, to try the present case, inasmuch as Law #1 of January 18, 1985 is unconstitutional, due to the fact that it deprived the Honorable Supreme Court of the inherent power to regulate everything concerning the exercise of the legal profession; violating the constitutional principal of separation of powers among the executive, legislative and judicial branches.

The Honorable Supreme Court did not request of the Legislature approval of any law whatever to deal with the specific complaint filed by the Senate of Puerto Rico itself, through the Hon. Miguel Hernández Agosto, presented during 1984.

The Honorable Supreme Court initiated the proceedings, and through Resolution of June 5, 1984, designated a panel of Special Examiners to evaluate the complaint presented by the Senate of Puerto Rico.

It was provided by the Honorable Supreme Court that the Special Examiners would uphold the complaint before three Special Commissioners, to be designated by this Honorable Court and who would act *en banc*.

On January 18, 1985, the Governor of Puerto Rico, Hon. Rafael Hernández Colón, signed Law #1, creating the position of Special Independent Prosecutor, as an electoral campaign promise (see exposition of motives of the aforementioned law, of which of the Hon. Commissioner was asked to take judicial

notice of); and in this manner it deprived the Honorable Supreme Court of Puerto Rico of continuing with the process which it had initiated in 1984. Further it appears from the exposition of motives of the aforementioned law that "In compliance with the commitment acquired with the People, the Senate of Puerto Rico, submits this bill, whose approval will guarantee an executive investigation of an exhaustive criminal nature and honesty which will permit the fixing of criminal responsibility"

As it appears from the exposition of motives previously quoted, at no time was the legislative intent to deprive the Honorable Supreme Court of its inherent faculty to regulate everything related with the legal profession, yet, that was the effect in practice.

In keeping with the Resolution of this Honorable Court, dated March 14, 1985 it put an end to the task given to the Panel of Special Examiners and ordered that the documentation in its power be delivered to the Special Prosecutor "In view of the terms of the quoted law and to avoid undue duplication or conflicts in the investigation."

We very respectfully understand, that the Panel of Special Examiners in formulating the petition to the Honorable Supreme Court, was not questioning the unconstitutionality of the referred law, they only understood that they were barred from continuing with their task, since Law #1, *supra*, had prohibited it.

Reply to:

II- "The Charges Presented In View of the Conclusions of Fact of the SIP."

The evidence presented by the SIP does not support any charge against the co-respondent Atty. Angel Figueroa Vivas. On the contrary, the prosecution witnesses admitted that they lied on the different occasions that they appeared to testify against the prosecutors and the investigators, during the first and subsequent investigations, including the appearances before the Grand Jury.

Reply to:

A- "Proven Charges, according to the SIP."

1- Charges against Atty. Angel Figueroa Vivas

Charge #1, was NOT proven by the SIP.

What the evidence presented showed was that the witness, Jesús Quiñones who supposedly confronted emotional instability, had resigned from his employment, had wept before Colonel Pérez Casillas and a short time after arriving at the SIB expressed being ill and Atty. Angel Figueroa Vivas ordered that he be taken to a Hospital and then to his home in Ponce.

What was testified to by the prosecution witness Atty. Romo, shows that no pressure was exerted on this witness and, on the contrary, he was treated with the utmost respect and consideration. As soon as he manifested that he felt ill, he was ordered to be taken to the hospital and measures were taken to take him to his home in Ponce and so avoid a possible accident, if it was so that he was sick as he alleged. Likewise, this is corroborated

by the witness Teresita García, who testified at the hearings, that when she went to Ponce and took the statement of Mr. Quiñones, on August 26, 1978, the same was taken in a normal manner and that there was no incident of any kind between the witness and the prosecutors. On the contrary, the relations were cordial between the prosecutors and the witness.

The prosecution witness, Jesús Quiñones, accepted that he lied when he stated before the prosecutor Villanueva, on November 21, 1978, page 28 at the end. Mr. Quiñones stated that the statement that had been previously started in San Juan was taken to his house and that only the last page was completed and that in same, he testified that he had only heard one single volley of shots. Previously, in the federal civil case, ex-policeman Quiñones had deposed that his aforementioned statement of August 26, 1978 was completely taken at his home, as in reality it occurred.

The testimony of witness Teresita García revealed that the sworn statement taken by her, August 26, 1978, at Ponce of Mr. Quiñones, was taken on a typewriter owned by her, which was submitted to an expert examination by order of Atty. Héctor Rivera Cruz. Copy of the aforementioned expert report was requested by the herein appearing party of the SIP and the same was never provided.

The prosecution witness Jesús Quiñones does not deserve any credibility. We cannot lose sight of the perspective, that according to the

wife of Mr. Quiñones, Mrs. Betzaida Velázquez, she testified that the same day of the facts at the Cerro Maravilla Jesús Quiñones instructed Mr. Julio Ortiz Molina so that he should not tell the truth of what had happened.

2- Charge Number 2 was not proven.

According to the statutory provisions, of which the Hon. Commissioner was requested to take judicial knowledge; 32 L.P.R.A. § 2045, *repealed in 1979 Methods of Taking the Depositions*; 31 L.P.R.A. § 3271, "The documents authorized by a notary or competent public employee are public documents, with the solemnities required by law"; and in 4 L.P.R.A. § 883, it is established that sworn statements shall be written and signed by the persons who so make them. The typewritten pages unread nor signed by a witness has no value, inasmuch as they cannot be considered in keeping with the provisions previously cited as sworn statements.

Atty. Angel Figueroa Vivas understood, and he so understands and has sustained it before all the forums in which he has appeared, that the two pages which contained an introduction and some questions and answers which had been taken, on August 17, 1978, from ex-policeman Jesús Quiñones, had no value, for which reason he proceeded to take the statement of the witness on August 26, 1978 at his home in Ponce, in the presence of his entire family, including his parents (see testimony of Ms. Teresita García). It was so done, due to the fact that because of the alleged illness of the witness, the same had only been initiated,

he had not written his initials and had not signed the same, according to what was required by the present law.

Nor can these pages be considered as a public document, as the SIP pretends they be accepted, since they do not comply with the statutory requisites previously indicated.

The conduct of Atty. Angel Figueroa Vivas in appearing at the home of Mr. Quiñones on August 26, 1978, and taking his statement in the presence of his family is demonstrative of a genuine interest of knowing the truth in the investigation of the events of Cerro Maravilla. This act of itself demonstrated that there was no intent whatsoever of concealing anything, inasmuch as he was being asked in his own home and in the presence of other persons.

From the evidence presented at the hearings, it appeared that before 1985, in the Department of Justice of Puerto Rico, no proceeding whatsoever existed for the taking of sworn statements (see Exh. 4 of Atty. Angel Figueroa Vivas).

Reply to:

- B- "Charges against Atty. Pedro Colton and Atty. Angel Figueroa Vivas."
 - 1- From the prosecutor's own evidence, it exonerates co-respondent Atty. Angel Figueroa Vivas from joint charge #1.

The prosecution witness himself Mr. Miguel Marte Ruiz, testified at the hearings that Atty. Angel Figueroa Vivas, had not had any intervention whatsoever in the taking of his

statement of August 4, 1978. (see pp. 51 & 52 of exh. 7 of Atty. Angel Figueroa Vivas.)

This prosecution witness, Mr. Miguel Marte Ruiz, appeared at the SIP on July 5, 1985 and gave a sworn statement. The last 23 pages, were delivered in blank by the SIP, and there was no reasonable explanation for it. On November 12, 1985, Mr. Miguel Marte appeared at the SIP and allegedly amended the statement that he had given on July 5, 1985. On this occasion he presents charges against Atty. Angel Figueroa Vivas, the same being completely opposite and irreconcilable with that which was expressed under oath before Atty. Héctor Rivera Cruz, on May 10, 1984. At the hearings, the prosecution witness, Mr. Marte, reaffirmed that Atty. Angel Figueroa Vivas had nothing to do with the taking of his statement on August 4, 1978. The prosecutor Aurelio Miró testified under oath in the Senate, that that statement, that of Mr. Miguel Marte, had been taken by him.

The SIP has not taken any action against Mr. Marte, a mendacious witness, who lied even after he was granted immunity in the Senate of Puerto Rico, in keeping with what he had accepted at the hearings before the Hon. Commissioner.

Why didn't the SIP explain the reason for the appearance of 23 pages in blank in the statement taken on July 5, 1985 of Mr. Marte and amended on November 12, 1985, when in the first statement it testified that it did not know which prosecutor had taken the same, and specifically stated "that he did not remember the face of the prosecutor" who

had taken his statement in 1978, that is, 7 years before. The accusations which he makes against Atty. Angel Figueroa Vivas in the aforementioned amendment, can be said to have been knowingly that they were totally false at the time of making them, inasmuch as at the hearings he reaffirms that he did not remember the prosecutor who had taken his statement. Further, the SIP knew, or should have known of that situation, inasmuch as this witness had testified previously, in 1984, before Atty. Héctor Rivera Cruz, that Atty. Angel Figueroa Vivas had nothing to do with the taking of his statement on August 4, 1978 and that the prosecutor who took same was prosecutor Aurelio Miró.

As a matter of fact the Hon. Commissioner, should have so stated in his determination of facts, but did not do so.

- 2- The SIP's own evidence exonerates Atty. Angel Figueroa Vivas of joint charge number two.

Its own prosecution witness Mr. Jesús Quiñones admitted that he lied when he said that Atty. Angel Figueroa Vivas was at the alleged meeting and that he had so testified at the civil case of *Soto v. Romero* 79-259 (exh. 3, pp. 29-31 of Atty. Angel Figueroa Vivas). When he was confronted with his previous statement, he admitted that Atty. Angel Figueroa Vivas was not there and he had so stated in the federal civil case.

Atty. José A. Romo, prosecution witness stated that he saw Mr. Jesús Quiñones on August 17, 1978 in the afternoon in the offices of the SIB, which is totally contrary to

and irreconcilable with that stated by Mr. Quiñones who alleged that Mr. Romo was with him and Figueroa Vivas in the morning.

- 3- The totality of the evidence presented, exonerates Atty. Angel Figueroa Vivas from joint charge #3.

The statement taken from Mr. Jesús Quiñones on August 26, 1978, was at his home, in the presence of his family, being present his wife, children and his parents, and it was so admitted by the witnesses for the prosecution.

There was no incident of any kind between the prosecutors and witness Mr. Quiñones on August 26, 1978 in his home. What appears in his statement was what expressed by him to Atty. Angel Figueroa Vivas (see statement of Ms. Teresita García).

The prosecution witness breached the truth, when he gave two totally irreconcilable statements, in the Federal Civil Case (exh. 3 of Atty. Angel Figueroa Vivas) when he stated that his statement of August 26, 1978 was taken in its totality in his home, and that subsequently, he appeared before prosecutor Villanueva, on November 21, 1980, and at page 28 towards the end, he testified that only the last page had been completed.

- 4- Taking into consideration the totality of the evidence presented at the hearings, this exonerates Atty. Angel Figueroa Vivas, and therefore does not support joint charge #4.

The report of August 29, 1978, is one which adhered to the evidence compiled by the investigating agents of the SIB, according to

the totality of the evidence presented at the hearings.

Since 1977, the SIB under the direction of Atty. Angel Figueroa Vivas initiated the investigation concerning corruption in the Puerto Rico Police (see the statement of Atty. José A. Romo). It is of public knowledge, that ex-lieutenant Julio César Andrades, today a convict in the federal jurisdiction, towards 1980 gave a statement concerning the alleged facts at Cerro Maravilla. This statement was the one that was admitted into evidence, without his having been announced as a witness, nor having appeared to be cross-examined by the respondents, violating the right to confrontation of the herein appearing party, Atty. Angel Figueroa Vivas.

Because of the fact that a second version arose, when the witnesses changed their statements offered during the first investigation, the investigators cannot be held responsible for this situation, inasmuch as the witnesses themselves had manifested under oath that they had agreed to lie to the prosecutors in 1978 and during the subsequent investigations.

From the evidence presented, it appears that already by 1978, Atty. Angel Figueroa Vivas, was investigating the corruption in the Puerto Rico Police, and thanks to his contribution the results which are of public knowledge were possible.

From the evidence presented by the SIP in the hearings no expert evidence of any kind was presented to decrease the value of the scientific job performed during the first

investigation in 1978: scientific studies concerning the autopsies performed on the deceased, and the expert studies and analyses practiced on all the evidence that was submitted to the laboratories. We must keep in mind that it was during this first investigation that a second autopsy was practiced upon the deceased by order of the herein appearing party and of Atty. Pedro Colton Fontán.

As has been previously stated, in the answer to the complaint, and the Comments and Objections to the Statement of the Case and Conclusions of Fact, at all times the dents that appeared on the pipes of the gate were taken into consideration. That is the reason why the photographs were in the file. From the evaluation of the totality of the evidence, no value whatsoever was given to same, due to the fact that the witnesses who were there at the time the facts occurred, testified, which is now known to be false, that no one had fired from inside, as they admitted. It is for that reason that it was determined that they might have been produced before or after the facts of July 25, 1978.

- 5- The evidence presented at the hearings, exonerate the co-respondent Atty. Angel Figueroa Vivas from joint charge #5.

The prosecution witness, Mr. Modesto Delgado admitted that he lied to the investigating prosecutors, due to the fact that he had received instructions from the upper management of the station to hid the facts in 1978, and even in 1980, continued lying to prosecutor Villanueva. He admitted that he

altered the scene by picking up casings and taking them home with him, without notifying the investigators. That he lied when he said that nobody had fired from inside. That he lied in regards to the number of volleys of shots. That he lied in regards to the fact that the gate was partly open. That he lied in regards to the "screen" in falsely stating that it did not exist. That he lied before the Grand Jury in regards to Cerro Maravilla. That he had lied to all of the prosecutors to protect Marte, protect himself and protect the firm for which he worked.

Atty. William Rodríguez, who was the investigating agent of the facts at Cerro Maravilla, in 1978, in his statement, of December 9, 1980, testified to prosecutor Villanueva that he did not know how the dents in the pipes of the gate were produced in 1978. Nor does he mention any other version given by Mr. Modesto Delgado.

Mr. José A. Romo, in the hearings did not testify what the SIP pretended to establish. If the investigating agents did not know how the dents were produced, much less so could Atty. Angel Figueroa Vivas know it, who was the Director of the SIB and was in charge of all the other investigations, including that of corruption in the Puerto Rico Police.

Reply to:

C- "Discussion of Other Charges According To The SIP"

At page 30, of the aforementioned report of the SIP, it tries to revive the alleged reliability of witness Mr. Miguel Marte Ruiz. The SIP pretends

to decrease the value of what happened at the hearings, and present its witness Mr. Marte with some simple doubts, concealing the real reason why the witness lied deliberately in making imputations against Atty. Angel Figueroa Vivas. The falsehoods of Mr. Miguel Marte were known to it, or should have been known to the SIP, inasmuch as said witness had testified to Atty. Héctor Rivera Cruz, on May 10, 1984, and he testified that Atty. Angel Figueroa Vivas had nothing to do with his statement of August 4, 1978.

Further, the Sip itself knew that the witness Miguel Marte had stated, on July 5, 1985, that he did not remember the face of the prosecutor who took his statement in 1978. See his statement, on July 5, 1985, p. 70 where the SIP asks:

"P. If I show you some photographs would you be able to choose which one it is.

W. Sincerely I don't remember the face."

How is it possible, that on November 12, 1985, Mr. Marte can appear at the SIP and amend his previous statement, and testify concerning the identity of the prosecutor who took his statement in 1978.

The SIP has not taken into consideration, that its witness has breached the truth, inasmuch as he personally knew Atty. Angel Figueroa Vivas as of 1979, when he appeared at the SIB to make false charges against a newspaper reporter, according to what the witness himself admitted. On that occasion Mr. Marte gave a sworn statement.

The reliability of Mr. Marte, is weakened even more, when it appears that the statement which he amended was given by the SIP with 23 pages

in blank. The SIP forgets that its witness admitted that he lied on repeated occasions, even after he was granted immunity in the Senate.

Further on, at page 32 of its report, the Special Prosecutor pretends to fit Atty. Angel Figueroa Vivas into a description which was offered by Mr. Marte in court: "A person with glasses, white, short, not big." The aforementioned description has no validity whatsoever, and the doubt is even greater when he testified that he did not remember the face of the prosecutor. The SIP forgets that its witness, as has been previously expressed, had testified before Atty. Héctor Rivera Cruz, on May 10, 1984, that Atty. Angel Figueroa Vivas had nothing to do with the taking of his statement, on August 4, 1978.

Lastly, the evidence of the prosecution, through the testimony of Atty. Romo, established that Atty. Angel Figueroa Vivas in 1978 and while he was Director of the SIB, issued all the subpoenas to the witnesses, that the agents of the SIB wanted to interview.

Reply to:

III- "Recommendations of the SIP"

Taking into consideration the totality of the evidence, Atty. Angel Figueroa Vivas, did not commit any violation of any law, nor of the Code of Professional Ethics.

Atty. Angel Figueroa Vivas, acted within the frame of conduct which is expected of an honest public official. He did not violate any law or ethical norm whatsoever, reason for which the case is quoted by the SIP are not applicable to the particular situation which has been charged against him.

We very respectfully understand, that the intervention of the herein appearing party, Atty. Angel Figueroa Vivas, should be evaluated in light of the knowledge which was available for the month of August of 1978 and not in the light of the information which was had as of 1987, knowledge which was not within his reach.

Further, it must be kept in mind that co-respondent Atty. Angel Figueroa Vivas being an officer who initiated and brought into public light the problem of corruption in the Puerto Rico Police, has been exposed to false charges by the persons who were the objects of his investigations, some of whom appeared and testified in the Cerro Maravilla case.

The SIP even at this stage, has not been able to understand that its prosecution witnesses lied to the prosecutors and investigating agents in 1978, they lied to the Grand Jury, they lied to the Federal Investigative Agencies, they lied to the prosecutors in 1980, and even in the Senate they lied, according to their own admissions. They have lied to the SIP and to the Hon. Commissioner.

Mr. Miguel Marte Ruiz, Mr. Jesús Quiñones, Mr. Modesto Delgado, Mr. Julio Ortiz Molina and other witnesses of the SIP, on reiterated occasions at the hearings, admitted that they lied on multiple occasions, according to the evidence presented by the SIP itself. The transcript of their testimonies will so reveal it.

IV- UNDUE PRESSURE EXERTED BY THE SIP

The respondent Atty. Angel Figueroa Vivas sets out hereunder the different specific situations in which the SIP has exerted undue pressure.

Now that the present case is finally before the consideration of the Honorable Supreme Court, finally the

SIP submits some "Comments and Recommendations concerning the Conclusions of Fact" which are not in keeping with the truth.

- 1- It appears from the record of the hearings that the performance of the prosecutors of the SIP in acting in the form and manner in which the prosecution witness Celia Cintrón Lema indicated, were in contravention to the law and denoted nearly no human sensibility on behalf of the SIP.
- 2- When the present case was before the consideration of the Honorable Supreme Court, for the determination or not of probable cause, a public campaign began announcing that there were crimes which were going to be time-barred, and as an unheard of matter, the SIP filed a "Proposal of Charges before there was a determination of probable cause" against the herein appearing party Atty. Angel Figueroa Vivas.
- 3- When the present case is before the consideration of the Hon. Commissioner, the SIP begins another campaign of threats against the co-respondent Atty. Angel Figueroa Vivas, with the purpose of creating an unfavorable and adverse environment before public opinion and before the Hon. Commissioner.
- 4- Towards the month of December of 1986 and the beginning of 1987, the SIP continued threatening to file criminal charges against the herein appearing party, Atty. Angel Figueroa Vivas.
- 5- Towards the middle of December of 1986, the SIP informed Atty. Angel Figueroa Vivas that

it was going to file criminal charges before the year was out; charges which never materialized. We understand very respectfully, that it so occurred, and was unjustified and improper.

- 6- The SIP communicated to the Hon. Commissioner that they were going to file charges against the respondents, charges which never materialized because they were unjustified and improper in keeping with the evidence presented by the SIP itself.
- 7- At page 3, paragraph B of its report, the SIP, this time tries to improperly bring, before the Honorable Supreme Court of Puerto Rico, the idea of immunity, with the sole purpose of inclining the balance in its favor, in an improper manner.

The subscribing attorney, as well as the herein appearing co-respondent, at no time has requested or has been in conversation with the SIP concerning agreements of immunity. It was so reported to the Honorable Commissioner.

V- FINAL CONSIDERATIONS

The co-respondent Atty. Angel Figueroa Vivas, during this long process which has extended for around 9 years, has had to appear in different forums to set out his position in relation to his intervention in the case of Cerro Maravilla.

The herein appearing party, because he was the person that initiated the investigation concerning corruption in the Puerto Rico Police and coordinated same with the Federal Agencies, has been the object of persecution by the persons who were under investigation.

The herein appearing party honestly deems, that he has been the victim of a political focus, which the investigation of the Cerro Maravilla case has been given. The aforementioned investigation has been prolonged for long years; and same has caused the appearing party and his family great anguish, sleepless nights, restlessness, fear and he has even been submitted to unjustified public scorn, all of this constituting a cruel and unusual punishment.

WHEREFORE, we very respectfully request of this Honorable Court that it order the dismissal of charges filed against Atty. Angel Figueroa Vivas.

RESPECTFULLY SUBMITTED:

CERTIFICATE: That on this same date I sent copy of this writ to Hon. Alejandro Salgado Rivera, Special Independent Prosecutor, P.O. Box 1297, Hato Rey, Puerto Rico, 00919; Atty. Eugenio Ramos and Atty. Elí B. Arroyo at GPO Box 2406, San Juan, Puerto Rico 00936; Atty. E.L. Belén Trujillo and Atty. Wilfredo Picorelli Osorio at P.O. Box 20682, Río Piedras, Puerto Rico 00925; Atty. Wilfredo Figueroa, Condominium Banco Cooperativo Plaza, Suite 503, Tower A, Ponce de León Avenue 623, Hato Rey, Puerto Rico 00917; and Atty. Héctor Santiago Rivera, Esteban Padilla Street #67, Bayamón, Puerto Rico 00619.

In Río Piedras, Puerto Rico on October 27, 1987.

(Signed) *Jesús Luis Maldonado*
Atty. JESÚS LUIS MALDONADO
Attorney for the Respondent
Acadia P1-13 Park Gardens
Río Piedras, P.R. 00926
Tel. 761-3169

APPENDIX L
IN THE SUPREME COURT OF PUERTO RICO

IN RE)	(
PEDRO COLTON FONTAN)	(
OSVALDO VILLANUEVA	)	NO. (
DIAZ	)	CE-86-666 (
AURELIO MIRO CARRION	)	( PROFESSIONAL
JUAN E. BRUNET	)	( CONDUCT
JUSTINIANO)	(
ANGEL FIGUEROA VIVAS)	(

MOTION FOR RECONSIDERATION

TO THE HONORABLE SUPREME COURT:

COMES NOW Angel Figueroa Vivas, through the undersigned legal representation, and very respectfully states, alleges and prays:

I. INTRODUCTION

1. On February 22, 1991, the appearing party was notified of an Opinion and Judgment entered, in the case of caption, by the Honorable Supreme Court the previous day, that is, February 21st of the same year, which provided, among other things, the permanent separation of the herein appearing party, Angel Figueroa Vivas, from the practice of the profession of law.

The herein appearing party, Angel Figueroa Vivas, very respectfully requests of this Honorable Supreme Court that it reconsider its opinion and Judgment in regards to what refers to him, for the following reasons:

II. THE EVENTS WHICH OCCURRED IN CERRO MARAVILLA AND THE FIRST INVESTIGATION

1. On July 25, 1978, the Police of Puerto Rico intervened at Cerro Maravilla with the youths Carlos E. Soto Arriví and Arnaldo Darío Rosado, who lost their lives in the aforementioned intervention, and subsequently, in other investigations, it was concluded that they had been murdered.
2. On the date of reference, the Police of Puerto Rico and Prosecutor Santos Nigaglioni, of the Ponce Prosecutor's Office, began an investigation of the facts and immediately, other prosecutors of the Criminal Division of the Department of Justice, joined in said investigation. It was not until August 2nd, 1978, that is, around 9 days later, that the Director of the Special Investigations Bureau of the Department of Justice, the then attorney Angel Figueroa Vivas, assigned two agents so that they would join and collaborate with the prosecutors assigned to the investigation of the case.
3. From the evidence compiled by the prosecutors and agents, a report was drafted signed by prosecutors Colton Fontán and Figueroa Vivas, on August 29, 1978; that is, 36 days after the occurrence of the facts.
4. Subsequent to the first investigation, others were carried out, finally concluding, that the youths Carlos E. Soto Arriví and Arnaldo Darío Rosado, were murdered at Cerro Maravilla by the Police of Puerto Rico.

III. COMPLAINT AND CHARGE AGAINST THE APPEARING PARTY, ANGEL FIGUEROA VIVAS, AND CLAIMS OF [sic] CONSTITUTIONAL PROCEDURAL VIOLATIONS:

1. It appears from the Resolution of this Honorable Supreme Court, of June 5, 1984, that the Honorable Senate of Puerto Rico, through its President, Honorable Miguel Hernández Agosto, presented before said High Forum, under oath, a Report Concerning Professional Conduct, based on the investigation performed by the Judiciary Committee of said body. In the aforementioned report, improper conduct was alleged against Atty. Figueroa Vivas and other lawyers. This Honorable Supreme Court, among other things provided, to relieve the Department of Justice and the Honorable Attorney General of Puerto Rico from participating and intervening in the proceedings of hearing the complaint, and provided a special procedure.

2. In the aforementioned Resolution this Honorable Supreme Court, also provided to designate a panel of 5 Special Examiners, whose task would be the evaluation, formulation and support of formal charges, for improper professional conduct that may be deemed necessary in each case, if any. It provided, further, that should cause be determined after the proceeding provided in the aforementioned Resolution, the Panel of Special Examiners should sustain the complaint before *three Special Commissioners, to be designated by said Supreme Court in due time, who would act en banc**, and they would be guided by the proceeding set out in Rule Number 13 sub-part (i) and (q) of its Regulation, and proceeded to name the panel of examiners.

* Underlining ours.

3. Notwithstanding this Honorable Supreme Court having designated a Panel of Special Examiners and having established the procedure for investigating the complaint, including the designation of three Commissioners to act *en banc* in the eventuality that probable cause be determined, the Honorable Legislature of Puerto Rico approved Law Number 1 of January 18, 1985, which created the Office of Independent Special Prosecutor.

4. By Resolution of March 14, 1985, this Honorable Supreme Court, in view of the provisions of Law Number 1 of January 18, 1985, and to avoid undue duplicity or conflicts in the investigation and subsequent processes, among other things, deemed the task entrusted to the Panel of Special Prosecutors finished, and ordered that the documentation in their power be sent to the Special Independent Prosecutor, and charged them with the functions of the Special Examiners before the Supreme Court.

5. The Honorable Supreme Court, in its Resolution of October 7, 1986, among other matters provided that: following the procedure set out in the original Resolution of June 5, 1984, granted a term to those attorneys to answer the reports, and once the matter was submitted, ordered the Special Independent Prosecutor, to file complaints against the appearing party, Angel Figueroa Vivas and others.

6. The Honorable Supreme Court, through Resolution of December 15, 1986, provided among other things that, in view of the answers to the complaint filed against the appearing party, Angel Figueroa Vivas and others, named as Special Commissioner Superior Court Judge,

Hon. Abner Limardo, so that in the presence of the parties he would hear and receive the evidence which these might present.

7. The appearing party has alleged before this Honorable Court, that Law Number 1 of January 18, 1985, violates the constitutional principle of separation of powers, because this Honorable Supreme Court had provided a procedure where it named 5 Special Examiners, and likewise, provided that the complaint, should probable cause be determined, be seen before three Commissioners who would act *en banc*, the aforementioned Law had the effect of depriving him of the liberal procedure provided for by this Honorable Court in its Resolution of June 5, 1984, and the change subsequent to the approval of the law, resulted an onus and prejudicial to the appearing party. We consider that this is so, since it is not the same that 5 Special Prosecutors submit a report to determine probable cause, than that that [sic] report be submitted by a special prosecutor. Likewise, it was more of an onus to the appearing party that the evidence presented, instead of being before three Commissioners, acting *en banc*, would be presented before just one Commissioner.

By the Senate of Puerto Rico filing the complaint on May 30, 1984, and in this Honorable Court providing the procedure, through Resolution of June 5, 1984, when Senate Bill 13 was presented and subsequently said bill being approved by the Legislature and converted into law on January 18, 1985, with the signature of the Honorable Governor of Puerto Rico, all knew that the Honorable Supreme Court of Puerto Rico, had approved a procedure to air the complaint and charges.

The appearing party understands with the utmost respect, that the Article 6 of the aforementioned Law which provided, among other things, that the Special Independent Prosecutor would have exclusive jurisdiction to process those penal, civil administrative and professional conduct actions which he deemed appropriate within the task which is entrusted to him here, including all the penal, civil, administrative and of professional conduct actions whose investigation and processing may have begun before the law went into effect. See also, the Exposition of Motives of the referred Law No. 1 of January 18, 1985, adversely affected him. He understands, very respectfully, further, that his allegation of violation of due process of law has a basis, due to the fact that in the application of Law No. 1 of January 18, 1985, it violates the principle of separation of powers, and further, that it is an *ex post facto* law.

The foregoing was presented to the Honorable Commissioner, through Motion Concerning Constitutional Questions, on January 26, 1987, and further, before this Honorable Supreme Court, through Motion Concerning Constitutional Questions of July 23 of the same year, in a detailed manner.

IV. VIOLATIONS OF DUE PROCESS OF LAW DURING THE PRESENTATION OF EVIDENCE:

1. The appearing party understands, very respectfully, that during the presentation of evidence in the case, the due process of law guaranteed by the Constitution of the Commonwealth of Puerto Rico was violated, and

further, as guaranteed by the Constitution of the United States of North America.

A. The appearing party requested that the Special Independent Prosecutor provide him with the sworn statements of the witnesses announced by the S.I.P., and there were provided to the appearing party, the statements, some with deletions, since they contained a number of blank pages. The same, among other things, are the sworn statements of Atty. José Romo Matienzo of January 21, 1984, and further, that of Mr. Miguel Marte Ruiz of July 5, 1985.

B. In spite of it having been requested by the appearing party, through Motion of February 2, 1987 before the Honorable Special Commissioner, the sworn statement of Mrs. Carmen Aledo, presented on September 8, 1981, before Atty. Héctor Rivera Cruz, the same was not delivered to the appearing party, depriving him of the right to use it to cross-examine and confront the witness.

C. In spite of it having been requested of the Honorable Commissioner, in the aforementioned Motion, the appearing party requested the delivery of the report concerning the expert study carried out on the typewriter which was used to prepare the sworn statement taken of Mr. Jesús Quiñones, on August 26, 1978, and the same was not delivered, depriving him of the right of confrontation.

D. The Special Commissioner, Honorable Abner Limardo, admitted into evidence sworn statements of witnesses who did not testify at the Hearings, being available for it; such as, for example, that of Lieutenant

Julio César Andrades – Exhibit Number 23 of the S.I.P. – depriving the appearing party of the right of confrontation with the witness, much more so when it is asserted that said witness was present, on August 17, 1978, at the Office of Prosecutor Colton.

E. The appearing party understands, very respectfully, that the due process of law was violated by the fact that the Special Independent Prosecutor submitted to this Honorable Supreme Court, a proposal of charges against him, without this Honorable Supreme Court having determined probable cause even for the filing of the charges which might be appropriate. – See Resolution of August 21, 1986, of the Honorable Supreme Court – and Motion of the S.I.P., of August 19, 1986.

V. ADDITIONAL BASES IN SUPPORT OF A MOTION FOR RECONSIDERATION:

1. The appearing party, Angel Figueroa Vivas, as of the date of the facts of Cerro Maravilla on July 25, 1978, was the Director of the Special Investigations Bureau of the Department of Justice, and was carrying out investigations concerning the corruption of members of the Puerto Rico Police, and some of those investigations were being carried out in coordination with the Federal Bureau of Investigations – (F.B.I.) – and the Lieutenant Julio César Andrades at that time, was one of the persons being investigated as a suspect of having illegally killed a person. See testimony before the Special Commissioner, Honorable Abner Limardo of March 12, 1987, from where it is transcribed, of witness for the S.I.P., Atty. José Romo Matienzo, Page 149 and 150 of the transcript:

"ATTY MALDONADO:

Q. Colleague, and I ask you if you had any knowledge that the Special Investigations Bureau was carrying out work coordinated with the Federal Bureau of Investigations . . .

A. Yes.

Q. . . that is, the Federal Bureau of Investigations.

A. Of that I have knowledge.

Q. You have knowledge. And tell me if it is or not so that the coordinated work which was being carried out included the investigation concerning corruption in the Puerto Rico Police.

A. That is true.

Q. And I ask you if you, being in the Special Investigations Bureau, had knowledge of the so-called Jessica case.

A. That is so.

Q. And I ask you to answer if it is or is not true that in that case the director of the Special Investigations Bureau, Mr. Angel Figueroa Vivas, ordered the confiscation of a vehicle of the Police in which the crime had been committed.

A. That is so.

Q. That is so. And tell me if it is or is not true, if you have any knowledge, that the proceedings had been carried out and they had tried persons in regards to that case.

A. That is so.

Q. I ask you if you have any knowledge if when a man named Papo Bolsa was killed, Andrades was the suspect of that murder.

A. He was one, it seems to me that he was one of those that were being investigated.

Q. Of the ones that were being inves . . .

ATTY. ARRAIZA:

Objection, Your Honor. If he's not sure, let it be stricken.

HON. COMMISSIONER:

Objection sustained.

ATTY. MALDONADO:

Q. Tell me if you know, whether it is or not so, that he had some knowledge of it.

A. That is, within the persons who were investigating, to my best recollection, he was one of them.

Q. He was one of them. Now, I ask you if it came to your knowledge being an officer of the SIB about a case of a wrestler known as Big Charlie.

A. Yes.

Q. And tell me if it is or it is not so that you had knowledge that the Puerto Rico Police was being investigated in relation to that case.

A. Also.

In Exhibit number 28 submitted into evidence by the appearing party, is a letter of William French Smith, "Attorney General" of the United States of North America of September 2, 1982 which reveals the cooperation of the federal and insular agencies in the fight against crime.

With the utmost respect, it seems irreconcilable that the Director of the Special Investigations Bureau which was directed by then Atty. Angel Figueroa Vivas, that together with the F.B.I. investigated corruption in the Puerto Rico Police, could have any interest in concealing what happened in Cerro Maravilla on July 25, 1978.

2. Policeman Jesús Quiñones, was subpoenaed to appear in the offices of the S.I.B., due to the fact that he was the policeman that had the custody of Mr. Julio Ortiz Molina on July 25, 1978.

Mr. Ortiz Molina had made statements to the Press, among other things, that he had been battered, and offered his version of how the facts occurred.

The statement was begun to be taken that day, August 17, 1978, being present Mrs. Carmen Aledo, Secretary, Mr. Quiñones and the herein appearing party, Angel Figueroa Vivas.

The witness appeared to be ill. He delayed in answering the questions which were posed to him, and some time after he had begun giving his statement, he manifested to the herein appearing party that he was ill. The herein appearing party stopped the taking of the statement, opened the door and proceeded to call the agents, José Romo and William Rodríguez, so they would take him to a Hospital, which they did.

The prosecution witness, Atty. José Romo, in the transcript of his testimony before the Honorable Commissioner, page 119-120, stated:

"Q. What was the headline?

A. Driver Accuses the Police.

Q. The police. Witness, now going back to August 17. You at the Senate testified that a given moment there was some argument between Attorney Figueroa and Witness Jesús Quiñones and he came to the door and Jesús Quiñones went out.

A. He didn't go out, instead he was seated in a chair.

Q. He was seated.

A. Aha.

Q. Why did Attorney Figueroa go to the door, if you remember?

A. Figueroa comes out and tells us that he seems . . . he is saying that he doesn't feel well and, then he went in and he said: 'Take him to the Hospital' and we took him to the Hospital.

Q. And did you have any knowledge of any differences between Attorney Figueroa and this witness.

A. Knowledge . . .

Q. There because of what was said.

A. Well, he was . . . it seemed like there had been an argument.

Q. See if that argument was not because Attorney Figueroa was confronting Mr.

Jesús Quiñones with those charges of Mr. Julio Ortíz Molina and he wanted him to know what Jesus Quiñones knew from his own knowledge of what Julio Ortíz Molina was alleging.

A. . . . I didn't know of the argument because they were inside."

The witness for the prosecution, Mrs. Carmen Aledo, at page 18-19 of the transcript of her testimony of March 11, 1987, before the Honorable Commissioner stated:

"Q. Mrs. Carmen, let us go back again to August 17. I rephrase the question again. See if what you classify in this deposition before Agustín Mangual, as an argument between Jesús Quiñones and Attorney Figueroa Vivas originated as a result of the fact that Atty. Figueroa confronted Mr. Jesús Quiñones with some expressions made by Mr. Julio Ortíz Molina to the Puerto Rican press weeks before August 17th.

A. It's that I can't remember the slightest detail.

Q. If I make it more simple. See if at the time that Attorney Figueroa Vivas asked Jesús Quiñones to explain what he knew of that version that Mr. Julio had given to the press of the land.

A. I don't remember.

Q. You don't remember.

A. No.

Q. Thank you very much, Mrs. Carmen."

Copy of the testimony that the witness, Mrs. Carmen Aledo, presented before Atty. Héctor Rivera Cruz, on September 8, 1981, a date when the knowledge of her participation as Secretary on August 17, 1978 was fresh, was never tendered to the herein appearing party, in spite of having requested it.

On June 20, 1980, Mr. Jesús Quiñones, was deposed in civil case *Soto v. Romero* in the Federal Court - (Exh.3 AFV) stating what occurred on August 17, 1978, and does not mention Attorney Figueroa Vivas as one of the persons who was at the office of Prosecutor Colton Fontán, in spite of the fact that only 2 years had gone by.

"Q. Mr. Quiñones, do you remember having given a sworn statement to Mr. Colton?

A. Yes.

Q. Could you describe the process when they took that sworn statement from you?

A. More or less.

Q. More or less when did you start giving this sworn statement?

A. You mean on what date?

Q. Was it during a weekday?

A. Yes.

Q. But the sworn statement is signed on a Saturday. It says 26th of August which was a Saturday.

A. No. I was subpoenaed to give a sworn statement on those facts on the 17th of June. Excuse me. The 17th of August. On August 17, that I remember correctly was

on a Thursday. Then something happened that that sworn statement could not be finished that day but it was finished on the 26th. That was a Saturday because they went to my home at eight o'clock in the morning.

Q. What happened on the 17th of August?

A. Excuse me if my voice cracks or if tears come out because I don't - it is something I don't want to remember. That day I was subpoenaed on the 17th. I came voluntarily to give the sworn statement. I arrived at the building that is right now - but right now if I were to go in a car, what the street is named, I couldn't [sic] tell you. I identified myself. I said I am Mr. Jesús Quiñones because I already presented my resignation to the police department. And then there was - I had signed a contract as a teacher and as you say, I presented myself as Mr. Jesús Quiñones Quiñones and then they passed me to a group of persons that now I can say is Attorney Colton. There was Mr. Colton. There was a Mr. - if I remember correctly, Rodríguez Suarez. If I remember correctly Rodríguez Suarez.

There was another one with the last name of - golly, Romo. There was Agent Andrades there and there was a very obese person. I consider myself fat but he was much more obese than I am and I don't know the name of that person up to now."

The witness for the prosecution, Atty. José Romo Matienzo testified under oath that he saw for the first

time, on August 17, 1978, Mr. Jesús Quiñones, in the afternoon at the offices of the S.I.B.

At page 128, of the transcript of his testimony before the Honorable Commissioner, Mr. Romo testified the following:

"Q. Witness, When is it that you saw for the first time, on August 17, Mr. Jesús Quiñones?

A. That I have seen him, that I remember that I have seen him.

Q. Visually. Yes, that you have perceived him with your sense of vision.

A. After lunch.

Q. After lunch. At what place?

A. At the Office of the S.I.B."

Yet, Mr. Jesús Quiñones affirmed that Mr. Romo was at the Office of Prosecutor Colton in the morning of August 17.

On August 26, 1978, Mr. Jesús Quiñones, gave a sworn statement before Atty. Angel Figueroa Vivas (Exh.2 AFV).

Mr. Jesús Quiñones testified, in the deposition in the civil case *Soto v. Romero* (Exh. 3 AFV) pp. 129 that after giving such a statement, he read it.

The aforementioned statement of August 26, 1978, was given in the presence of relatives, and Attorney Figueroa posed questions, and Mr. Quiñones answered them, and Miss Teresa García transcribed directly to the typewriter. - Transcript of testimony of Teresa García,

Secretary of the Special Investigations Bureau, given before this Honorable Commissioner. -

With the utmost respect, the appearing party understands, that from the testimony of the witness of reference it reveals that, Angel Figueroa Vivas, did not act in any way incorrectly, or in violation of the code of ethics.

An examination of the statement of Mr. Jesús Quiñones, on August 26, 1978 (Exh. 2 AFV) reveals the spontaneity, of the answers offered to the questions that were posed.

At page 2 - line 24 - he is asked:

"Q. After you had lunch, what did you do?

A. After having lunch and some time having lapsed which I also cannot recall exactly, I went to the communications tower which I think is of the Police, after a while, also of which I can't be specific, I heard several detonations of firearms."

From page 2 to page 4 of the aforementioned testimony, the herein appearing party asked him everything related with Mr. Ortíz Molina.

On page 4, the next to last question, he is asked:

"Q. How many series of shots coming from the Rikavisión tower channel 7, did you hear?

A. A series. I can't be precise as to when it occurred. I only know that it was after I had had lunch."

The witness, Jesús Quiñones, did not offer the version of Mr. Ortíz Molina, in his statement of August 26, 1978. With the utmost respect we understand that, he did

not do so because from the very first day of the events at Cerro Maravilla, on July 25, 1978, he concealed what happened. That is corroborated by the testimony of the wife of Mr. Quiñones, Betzaida Velázquez, presented before the Honorable Special Commissioner - Pp. 506, line 23 at page 507, line 2 - :

"Q. Worried. Did he tell you the nature of the concern?

A. Yes.

Q. Excuse me?

A. Yes, sir.

Q. Can you explain to us what it was that he told you on July 26, 1978?

A. Well, he explained what had been told to him by the public vehicle driver, Mr. Julio Ortiz Molina. And well, that he had stated at that moment to Mr. Molina, that while he was there in the area of the hill, well not to tell anybody anything about that because he feared for his life, of Mr. Julio and his own also."

Mr. Carmelo Cruz Arroyo, witness for the prosecution, testified that his boss instructed them to lie and that they all lied. Transcript of the testimony of Carmelo Cruz Arroyo - page 737 and 782, before the Honorable Special Commissioner.

During the first investigation, in 1978, of the events at Cerro Maravilla no sworn statement was taken of Mr. Modesto Delgado, due to the fact that the Agents did not report him as a person with knowledge of the facts.

Mr. Modesto Delgado, in his testimony, given before the Honorable Special Commissioner, transcribed, admitted that since the date of the facts, July 25, 1978, he began to lie; and that he lied even to the Federal Grand Jury.

Atty. José Romo, testified, before the Honorable Supreme Court, that he did not have any knowledge that there were any witnesses who still had to be deposed. Page 172 - of the transcript of his testimony before the Honorable Supreme Court:

"Q. Of all. You had knowledge of the witnesses from whom sworn statements had not been taken.

A. No.

Q. You didn't have knowledge. Was there any witness who still lacked the taking of a sworn statement that you had alerted, as an investigator, the prosecutors for them to take that sworn statement?

A. No."

Atty. William Rodríguez, in his sworn statement of December 9, 1980, before Prosecutor Villanueva (Exh. 17 AFV) stated that he didn't know how the shots on the pipes were produced.

"P. Tell me if you were able to observe shot marks on the entrance gate of Rikavisión?

W. Yes, sir.

P. Do you know how they were produced?

W. No, sir."

3. The Reports of the Pathologists, Dr. René A. Rigal and Dr. Rafael Criado (Exh. 14 and 15 of AFV) reveal the following:

A. Dr. René R. Rigal, in the autopsy practiced on July 26, 1978, upon the corpse of Arnaldo Darío Rosado, among other things states in his report: (Exh. 15 AFV) "That no sign of trauma was observed, except for the ones mentioned" The ones mentioned refer only to the wounds that the corpse of Arnaldo Darío Rosado showed.

In the commentaries that Dr. Rafael Criado makes, page 1 of the aforementioned report, he points out the following:

"This in our judgment is indicative that throughout the entire surface of the body there is absent all types of evidence of trauma such as hematomas, erosions, abrasions, ruptures, lacerations. That is to say, everything that is not a described round penetrating wound were absent in the body of the deceased before as well as after death which on occasion is produced in the management of a body in its transfer to the hospital."

After having performed the second autopsy, Doctor Rafael Criado, at page 5 at the end of his report, points out that:

"The perpendicular cuts of the four possible hematomas or alterations of the skin of the post-mortem type of decomposition, described in the examination of the belly did not demonstrate subdermic hemorrhagic infiltration and did show a greenish infiltration compatible with putrefying processes."

B. In the Report of Autopsy performed on the youth Soto Arriví - (Exh. 14 AFV) on July 26, 1978, by the Pathologist, Dr. René R. Rigal, he points out in his paragraph e, of his report that:

"Superficial erosions of the skin in the forehead, the left malar region, over the nose and upper lip."

In the comments of Dr. Rafael Criado makes, in his report, page 2, Forensic Medical Report, in relation to the death of Mr. Juan Soto Arriví; latter identified as Carlos Soto Arriví, page 2, expresses that:

"Comments:

In our opinion, these superficial erosions are characteristic and compatible with what we frequently find in deceased who have fallen to the floor victims of the or the wounds that produce death."

In the drafting of the report the herein appearing party, Angel Figueroa Vivas, took into consideration all the evidence gathered, including the photographs of the deceased and the reports of the pathologists, as has been previously stated.

The expert criterion of the Pathologists, Dr. René R. Rigal and Dr. Rafael Criado, in our judgment, had pre-eminence and explained what could be seen from the photographs, and it was not up to us to substitute their expert criteria.

4. The herein appearing party, very respectfully, requests by way of reconsideration of this Honorable Supreme Court, that it consider that at the date on which the testimony under oath of Mr. Jesús Quiñones was

desired, on August 17, 1978, in our judgment, the transcribed pages did not constitute a sworn statement according to the prevailing law (4 L.P.R.A. § 883) and (32 L.P.R.A. 2045), since because of the sudden illness of the witness, he had not read, made corrections, initialled the pages nor signed what had been stated by him up to that moment.

5. The herein appearing party requests of this Honorable Supreme Court, very respectfully, further, that it consider what has been declared by Agents William Rodríguez and José Romo, to the effect that the first report prepared on August 29, 1978, reflected the totality of the evidence compiled.

The theory of self-defense and that of a single volley of shots, was honestly believed by the appearing party, who was led to error by the unworthy testimony of the Agents of the Puerto Rico Police, who intervened in the events at Cerro Maravilla on July 25, 1978, and of other witnesses.

It was not until several years later, upon the case being reinvestigated, and having the involved members of the Police admitted that they had lied and that they had concealed the truth, that there was evidence of what had really occurred and that the youths Carlos Soto Arriví and Darío Rosado were murdered by Agents of the Puerto Rico Police.

Law Number 38 of July 13, 1978, which created the Special Investigations Bureau, in its Article 17 (3 L.P.R.A. § 138p) provides:

"In all those cases in which the Bureau deems that there exists cause of criminal process or to

take any other action, the Director, his legal representative, or the person in charge of the investigation shall file the corresponding action before the courts."

The herein appearing party requests of this Honorable Supreme Court, very respectfully, that it take into consideration, that the determination not to submit criminal cases, because it considered that the evidence from the reports of the first investigation would not be sustained, made possible that upon reinvestigation of the case, and the new evidence appearing to support it, was what made possible that charges be filed and they were supported in the Courts.

6. Finally, the herein appearing party requests of this Honorable Supreme Court, very respectfully, that it consider and take knowledge of his distinguished service sheet as a public servant, provided to this country and that in the waning of his public career, understands that he was motivated by error.

WHEREFORE, it is respectfully prayed of this Honorable Supreme Court, very respectfully, that it reconsider its Opinion and Judgment entered on February 21, 1991, and vacate same in regards to the herein appearing party, Angel Figueroa Vivas, is concerned, and enter another in reconsideration, exonerating him.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, on March 6th, 1991.

(Signed) Jesús Luis Maldonado
Atty. Jesus Luis Maldonado-4669
Attorney for Angel Figueroa Vivas
Acadia P1-13 Park Gardens
Río Piedras, P.R. 00926
Tel: 761-3169

I CERTIFY: Having sent copy of the foregoing, by certified mail, to the Honorable Special Independent Prosecutor, Atty. Alejandro Salgado Rivera, Call Box 1297, Hato Rey, Puerto Rico 00919.

In San Juan, Puerto Rico, on March 6th, 1991.

(Signed) Jesús Luis Maldonado
Atty. Jesus Luis Maldonado-4669
Attorney for Angel Figueroa Vivas
Acadia P1-13 Park Gardens
Río Piedras, P.R. 00926
Tel: 761-3169

APPENDIX M
IN THE SUPREME COURT OF PUERTO RICO

IN RE)	(
PEDRO COLTON FONTAN)	(
OSVALDO VILLANUEVA	)	NO. (
DIAZ	)	CE-86-666 (
AURELIO MIRO CARRION	)	( PROFESSIONAL
JUAN E. BRUNET	)	( RESPONSIBILITY
JUSTINIANO)	(
ANGEL FIGUEROA VIVAS)	(

**MOTION CONCERNING CONSTITUTIONAL
QUESTIONS**

TO THE HONORABLE SUPREME COURT:

COMES NOW the co-respondent Atty. Angel Figueroa Vivas, through the undersigned counsel and very respectfully states, alleges and prays:

1. On January 26, 1987, it was submitted to the Special Commissioner, Hon. Abner Limardo, a motion concerning constitutional questions, which has not been ruled upon to the present date.
2. That having the Hon. commissioner, submitted the report before this Honorable Court and not having ruled on the constitutional questions presented, we submit that same are before your consideration.
3. that the Hon. Special Independent Prosecutor, does not have the faculty to process the complaint against the herein respondent inasmuch as Law Number 1 of January 1, 1985, which creates the position of Special Independent Prosecutor is unconstitutional, since it is a law which deprives the Honorable Supreme Court

of the inherent power to regulate everything concerning the exercise of the legal profession, including the disciplinary jurisdiction, violating the principle of separation of powers between the judiciary and legislative branches. Further the aforementioned law makes an improper delegation in the Special Prosecutor, and becomes therefore an *Ex Post Facto* law inasmuch as the process established after the approval of Law Number 1, *supra*, is more onerous towards the herein respondent.

In the application of the referred law the Due Process of Law of the respondent has been breached (guaranteed by the Constitutions of the Commonwealth of Puerto Rico and the United States of America). The respondent specifically alleges and invokes the following:

- a. Law Number 1 of January 8, 1985, which creates the position of Special Independent Prosecutor, is unconstitutional, inasmuch as the faculty to investigate and continue with the investigations which were being carried out by the Panel of Special Examiners, designated and named by the Honorable Supreme Court, of Puerto Rico, through Resolution of June 5, 1984. Law Number 1, *supra*, is unconstitutional inasmuch as it deprives the Honorable Supreme Court of the inherent faculty to regulate everything concerning the exercise of the legal profession, violating the principle of separation of powers, between the judiciary and legislative branches in the present case.
- b. Article 6, of Law #1, *supra*, which establishes that: "The Special Independent Prosecutor shall have exclusive jurisdiction to investigate and process those penal, civil and administrative actions and of professional conduct which he deems appropriate within the task which he is assigned here, including all those penal, civil and administrative and of professional

conduct actions whose investigation and processing may have been initiated before the effectivity of this law." (Underlining ours) is unconstitutional, since it grants a faculty and delegation, to the Special Prosecutor, so impermissibly broad, that it concentrates excessive and too many powers in just one person, including that of initiating processes of discipline, which is an inherent power of the Honorable Supreme Court. Further, the faculty of delegating to the Special Prosecutor the powers delegated to him by the Legislative Assembly. In our judgment, no law approved in this country, has granted so many powers to one public official, as is done in Law #1, of January 18, 1985.

- c. Law Number 1, *supra*, was approved, to be applied retroactively to some facts which occurred on July 25, 1978, in the penal, administrative and professional conduct environment, which constitutes an *ex post facto* law and violates the Constitution of the United States of America and that of the Commonwealth of Puerto-Rico.

The proceeding established by the Honorable Supreme Court, through its Resolution of June 5, 1984, creating a Panel of Special Examiners who would sustain the complaints before three Special Commissioners, to be designated by the Honorable Supreme Court, who would act *en banc*, was set aside, by virtue of Law Number 1, *supra*, constituting at the present a more burdensome process for the herein respondent.

- d. The Special Prosecutor, in the application of the law, violated the Due Process of Law of the herein respondent, guaranteed by the Constitution of Puerto Rico and that of the United States of America, in submitting to the Honorable Supreme Court, a proposal of Charges against the herein respondent, in a stage in

which the Hon. Court was in the process of determining or not probable cause for the filing of charges; said proposal was never notified to the respondent.

(See resolution of August 21, 1986 of the Honorable Supreme Court.)

- e. That as a result of the facts occurred at Cerro Maravilla, on July 25, 1978, and the political state in which Puerto Rico was immersed, the respondent has been the object of multiple newspaper articles and radio and television commentaries, multiple investigations in the State and Federal jurisdictions. Further, during this extensive period of time he has been the object of newspaper reports where he has been threatened with the filing of criminal charges. The fact of having been the object of multiple and varied investigations and of the publicity that the Maravilla Case has had, from the political point of view and others who have used it for the purposes of protecting themselves from the actions for corruption which were in turn being investigated by investigative organisms of Puerto Rico and the United States of America; have provoked pressures, disturbances, discomfort to the respondent as well as his family; and the fact that after so many years, more than 9 years, to continue to be submitted to investigative processes against him, all of that constitutes cruel and unusual punishment prohibited by the Constitution of the Commonwealth of Puerto Rico and that of the United States of America.

WHEREFORE, it is respectfully requested of this Honorable Court, that it grant the present motion and declare Law #1 of January 18, 1985 unconstitutional, and it order

the dismissal of the complaint filed against Atty. Angel Figueroa Vivas.

RESPECTFULLY SUBMITTED:

CERTIFICATE: That on this same date I sent copy of this writ to Hon. Alejandro Salgado Rivera, Special Independent Prosecutor, P.O. Box 1297, Hato Rey, Puerto Rico, 00919; Atty. Eugenio Ramos and Atty. Elí B. Arroyo at GPO Box 2406, San Juan, Puerto Rico 00936, Atty. E.L. Belén Trujillo and Atty. Wilfredo Picorelli Osoria at P.O. Box 20682, Río Piedras, Puerto Rico 00925; Atty. Wilfredo Figueroa, Condominium Banco Cooperativo Plaza, Suite 503, Tower A, Ponce de León Avenue 623, Hato Rey, Puerto Rico 00917; and Atty. Héctor Santiago Rivera, Esteban Padilla Street #67, Bayamón, Puerto Rico 00619.

In Río Piedras, Puerto Rico on July 23, 1987.

(Signed) *Jesús Luis Maldonado*
Atty. JESUS LUIS MALDONADO
Attorney for the Respondent
Acadia P1-13 Park Gardens
Río Piedras, P.R. 00926
Tel. 761-3169

APPENDIX N
IN THE SUPREME COURT OF PUERTO RICO

ANSWER TO THE COMPLAINT

Hon. Alejandro Salgado Rivera
Special Independent Prosecutor
P.O. Box 1297
Hato Rey, Puerto Rico 00917

ATTY. JESUS LUIS MALDONADO
Attorney for the Respondent
Acadia P1-13 Park Gardens
Río Piedras, P.R. 00926
Tel. 761-3169

TABLE OF CONTENTS

	PAGES
I. Introduction	1
Plea	1
General Aspects Related to Atty. Angel Figueroa	-
Vivas	1-2

II. Steps Taken Concerning the events at Cerro Maravilla.....	2-4
III. Answer to Charges Against Atty. Angel Figueroa Vivas.....	4
Charge number One	4-12
Charge number Two	12-14
IV. Charges Against Attys. Pedro Colton Fontán and Angel Figueroa Vivas.....	14
Charge number One	14-15
Charge number Two	15-16
Charge number Three	16-17
Charge number Four	17-19
Charge number Five	19-20
V. Conclusion and Prayer.....	21

IN THE SUPREME COURT OF PUERTO RICO

ANSWER TO THE COMPLAINT

TO THE HONORABLE SUPREME COURT:

Comes now the Respondent, through his subscribing counsel and very respectfully states, alleges and prays:

I. Introduction

1. By virtue of the Order dated October 14, 1986, of this Honorable Court, Atty. Angel Figueroa Vivas submits an answer to the complaint filed by the Special Independent Prosecutor Hon. Alejandro Salgado Rivera.

2. Plea

The charges constituting a violation of the Code of Professional Ethics, by the intervention of Atty. Angel Figueroa Vivas, as Director of the Special Investigations Bureau of the Department of Justice of Puerto Rico, in the investigation of events occurred on July 25, 1978 at Cerro Maravilla, are denied.

3. General aspects related with Atty. Angel Figueroa Vivas

Atty. Angel Figueroa Vivas, because of his work and sense of responsibility strove to search for the truth, for the purpose that justice be made in the cases investigated under his tenure in the Special Investigations Bureau, the results obtained in innumerable cases is public knowledge.

He has been honest in setting out the facts object of the present investigation in every forum in which he has appeared.

He is one of the former officials who has most contributed for the benefit of the People of Puerto Rico, by his investigative work in the criminal cases in which he has participated.

He was responsible for initiating the investigation concerning corruption and Organized Crime in Puerto

Rico. He coordinated with the Federal Organisms, the Investigations concerning corruption in the Police, for which reason the possibility that the charges made by the witnesses may be motivated as a reaction to the investigations already begun, to prejudice his image and of the investigative work concerning governmental corruption which is being carried out, at all levels, since some time ago and whose results are of public knowledge.

II. Steps taken related to the events at Cerro Maravilla.

Since July 25, 1978, up to the present time, multiple investigations have been carried out, by the Executive, by the Legislature and in the federal jurisdiction by the Grand Jury and the Federal Bureau of Investigations.

In each one of these, some witnesses have varied or altered their original version of the facts, which is of public knowledge, the multiple accusations or charges which have been presented in the federal and local jurisdiction.

1. On or about September 15, 1980, Atty. José Enrique Arrarás, gave a sworn statement in the city of Washington, District of Columbia wherein he states, in synthesis, that he met with former agent Julio Andrades and with Arzola, who allegedly had knowledge concerning another version of the events at Cerro Maravilla and one of them had met with the President of the Popular Democratic Party, senator Miguel Hernández Agosto.

Messrs. Arzola and Julio Andrades, today convicts in the Federal Jurisdiction, the latter, was being investigated

by personnel of the S.I.B. in 1980, in relation to corrupt acts.

Former agent Andrades approached Atty. Arrarás so that he would help him in the process of obtaining immunity.

2. The Senate of Puerto Rico, presented a report concerning Professional Conduct before the Supreme Court of Puerto Rico on March 30, 1984, who in turn proceeded to name a Panel of special Prosecutors to evaluate all of the evidence.

3. Through Law number 1 of January 18, 1985, the position of Special Independent Prosecutor was created to investigate the incidents of Cerro Maravilla, which by Resolution of this Honorable Court, dated March 14, 1985 the responsibilities were transferred from the Special Solicitors to the Special Independent Prosecutor.

4. The former Secretary of Justice of Puerto Rico, Hon. Carmen Rita Vélez Borrás, on Nov. 10, 1983, designated Atty. Agustín Mangual Hernández, to carry out an investigation concerning the facts of Cerro Maravilla and to pass judgment concerning the conduct of officials in keeping with the report of the Senate of Puerto Rico.

5. The report, dated February 17, 1984, signed by Atty. Agustín Mangual, was referred, to the Assistant Solicitor General of the Department of Justice, the Hon. Eliadis Orzini Zayas for the corresponding processing.

Atty. Angel Figueroa Vivas was required to answer the same.

6. Through resolution, dated May 6, 1986, the Honorable Supreme Court, ordered the Special Independent Prosecutor to send copies of the reports of December 4, 1985 and April 1, 1986 to each one of the attorneys involved, and ordered that:

"The Respondents answer said report within 15 days."

7. On June 1, 1986 Atty. Angel Figueroa Vivas pro se, submitted and answered to the report dated December 4, 1985, of Special Prosecutor Hon. William Fred Santiago, which had been received on May 19, 1986.

8. On August 19, 1986, the Special Prosecutor requests, of the Supreme Court [permission] to submit a proposal of specific charges, so that the Court would use them as a guide in the determination of probable cause which is before their consideration.

9. Through Resolution, dated August 21, 1986, the Honorable Supreme Court granted the Special Independent Prosecutor until September 19, 1986, to submit the petition concerning the proposal of charges.

10. The alleged Proposal of Charges, of the Special Independent Prosecutor, was not notified to Atty. Angel Figueroa Vivas.

11. The Honorable Supreme Court, through Resolution dated October 7, 1986, ordered the Independent Prosecutor to proceed with the filing of the disciplinary complaint against the herein respondent and others.

III. Answer to the charges against Atty. Angel Figueroa Vivas

1. The respondent denies charge number one and alleges the following:

— a. On August 17, 1978, Policeman Jesús Quiñones Quiñones was subpoenaed, by Atty. Angel Figueroa Vivas, for him to appear at the offices of the S.I.B. in relation to the Case Object of the Investigation.

b. Mr. Jesús Quiñones, was the Policeman who had guarded Mr. Julio Ortíz Molina, at the Police Tower, near the place of the facts, for more than three hours, on July 25, 1978.

There was interest in knowing the version that Mr. Ortíz Molina had made to Policeman Quiñones, as well as what he had heard of the version offered by him on the afternoon of July 25, 1978, since Mr. Julio Ortíz Molina had given three sworn statements, up to that moment, and same were not consistent with the fundamental facts and had filed a civil suit against the Commonwealth.

c. Former Policeman Jesús Quiñones appeared to be emotionally affected, when for the first time he entered the Office of the Director of the S.I.B., Atty. Angel Figueroa Vivas, in the afternoon hours of August 17, 1978. He was extremely nervous, and spoke concerning an alleged incident which had occurred to him in the Police.

The statement was begun in the afternoon, in the presence of secretary Ms. Carmen Aledo, who wrote same directly onto the typewriter. To each question posed,

Policeman Quiñones delayed 5 or 10 minutes in answering it.

He alleged that he did not remember what Mr. Julio Ortiz Molina had narrated to him on the afternoon of July 25, 1978.

Atty. Angel Figueroa Vivas called Prosecutor Pedro Colton to discuss the attitude of former Policeman Quiñones, since that night they would be present at the second autopsy which was going to be performed on one of the deceased.

The taking of the deposition had not been renewed when former Policeman Quiñones manifested that he was sick.

Atty. Angel Figueroa Vivas ordered Agents Atty. William Rodríguez and Mr. José A. Romo to take him to the hospital without delay. Afterwards he instructed the same agents of the S.I.B. to take him to his house in Ponce, once he got out of the hospital and not to allow him to drive his automobile to avoid a possible accident on the way.

d. On August 26, 1978, Atty. Angel Figueroa Vivas visited the home of the former Policeman in Ponce to take his statement.

Former Policeman Quiñones manifested that his parents were coming to visit him and that he wanted the statement taken at his house. The prosecutors went into the house at his request and waited until his parents arrived. As soon as the parents arrived, secretary Ms. Teresa García, was invited to come into an area near the kitchen and there Atty. Angel Figueroa Vivas took the

statement. The taking of this statement lasted about two hours.

Former Policemen Quiñones read it, initialed all the pages and proceeded to sign it in the presence of Atty. Angel Figueroa Vivas; later offered coffee and refreshments, which were not accepted and they said good-bye to the entire family.

e. There was no incident before or during the taking of the aforementioned statement.

f. The charge that Atty. Angel Figueroa Vivas may have mistreated Mr. Quiñones on August 17, 1978 at the offices of the Special Investigations Bureau in San Juan does not withstand analysis, when subsequently it is Mr. Jesús Quiñones who invites Atty. Angel Figueroa Vivas to take his statement in his own home, not at the police station, on August 26, 1978.

g. Former Policeman Jesús Quiñones was treated with the greatest respect and consideration on August 17, 1978 at the offices of the S.I.B. in San Juan, as well as on August 26, 1978, at his home in Ponce, when his statement was taken concerning the facts of the Cerro Maravilla case.

Atty. Angel Figueroa Vivas took pertinent measures to protect the witness' health and avoid a possible traffic accident if he were allowed to drive while ill as he was alleging.

h. Former Policeman Quiñones deliberately lied in making charges against Atty. Angel Figueroa Vivas when he stated before Prosecutor Osvaldo Villanueva, before the Senate of Puerto Rico, before Atty. Agustín

Mangual and before the other forums in which he has appeared.

In the sworn statement given by former Policeman Quiñones, on November 21, 1980, before Prosecutor Osvaldo Villanueva, the falsehood of his testimony appears. Towards the end of page 28 when he says that:

"Then, already inside my house, in the small dining room of the house there, well, they put a typewriter. Then the Prosecutor told me: 'I bring you the entire statement which we had taken of you over there, but since you had spoke of eliminating the last part - which I don't really remember having told them that we're going to take the last part which was just one sheet - that sheet only, since what made me make reference to detonations coming from Cerro Maravilla you heard that it was one of the questions that I remember and I said: One only. That is all that I want to declare concerning Cerro Maravilla and I told you: for now that is all I have to state.' Then they told me: 'sign here' and I signed the rest and I, since the interest was, I tell you sincerely to get out of this whole mess, I did it just like that. They were there a while longer in my house, they said good-bye and they left."

i. The statement taken of former Policeman Jesús Quiñones on August 26, 1978, at his home in Ponce, was made in its totality at the same time, in one typewriter the property of Ms. Teresa García. Same consists of four pages. Page three ends with a question and the answer is on page four.

From a reading of the statement of former Policeman Quiñones of August 26, 1978 you can notice that there is uniformity in all the questions presented by Atty. Angel

Figueroa Vivas and the answers given by the witness. There exists a spontaneity in the witness, which demonstrates the contrary of what he is alleging that he was under pressure and harassment.

To the question presented by Atty. Angel Figueroa Vivas, at the end of page four of his statement dated August 26, 1978, former Policeman Quiñones answers:

"Q - How many series of shots coming from the tower of Rikavisión Channel 7, did you hear.

A - A series. I cannot specify when it occurred just that it was after I had had lunch.

Q - Do you have anything else to state.

A - That is all."

In keeping with what was testified to by former Policeman Jesús Quiñones, on August 26, 1978, is the sworn statement dated August 8, 1978, of Radio Technician, Mr. Rafael Antonio Acosta, who was at Cerro Maravilla, at the time the facts occurred and testified the following:

"Q - While you were at that place, did you hear anything out of the ordinary which attracted your attention?

A - More or less about 12:30 P.M. I heard a series of detonations which lasted about five seconds.

Q - Witness can you described what that series of detonations that you heard like?

A - I heard, the detonation some a little loud and others a little lower, but all in a series which lasted about five seconds.

Q - How many series of shots did you hear?

A - One series"

Former Policeman Quiñones was not the only one that had heard just one series of shots, technician Rafael Acosta, so testified.

Other statements of former policemen, pointed out that they had heard just one series of shots.

Atty. Angel Figueroa Vivas alleges and categorically states, before this Honorable Court that never in his professional life has he instigated or exerted pressure of any kind, so that a witness will lie changing the facts which he knows of his own knowledge.

What former Policeman Jesús Quiñones has testified voluntarily and without pressure, threat or intimidation whatsoever in regards to the Cerro Maravilla case, is what appears in his statement of August 26, 1978, taken at his home at the presence of his family.

If the contents of said statements are not true it is former Policeman Quiñones who lied voluntarily to cover up the truth and protect other persons, his colleagues, if the facts did not occur in that manner, as it was later alleged in 1980.

The former Policeman Quiñones also lied when he stated before the Senate and before Prosecutor Villanueva of everything Mr. Ortíz Molina had told him at the police tower on July 25, 1978.

At Page 3, of his statement of August 26, 1978, Atty. Figueroa Vivas presented him with the following:

"Q-Did Mr. Julio Ortiz Molina inform you of anything while he was accompanied by the agent?

A-Yes sir he narrated the odyssey of what had happened to him but I did not ask him anything"

Q-What did Mr. Ortiz do after remaining alone and the agent who accompanied had left.

A-He remained talking concerning the odyssey through which he lived for a relatively long time, but I also can't state the amount of time.

Q-How long did Mr. Ortiz remain at the place where you were?

A-Mr. Ortiz remained about three and some odd hours could be more or less.

Q-Witness could you inform what was the odyssey which he spoke of by Mr. Ortiz Molina?

A-At this moment I couldn't precise the details of everything that he was telling me when we arrived where I was working.

The sworn statement taken by former Police-man Quiñones, on August 26, 1978 at his home in Ponce covered substantially all the aspects concerning the knowledge that the witness may have had, from places where he worked, to the time that he arrived at the work site, the person with whom he met at the tower, what he saw, what he heard, what he observed of Mr. Ortiz Molina and what he spoke about.

The questions formulated cover all the aspects concerning the knowledge that the witness may have had, if he lied when he testified, only he knows why he did so as well as the other witnesses who have changed their original testimony given before different prosecutors given in 1978 if it's true that they have done so.

J- Prosecutor Osvaldo Villanueva in his report of January 19, 1980 concerning the Maravilla case at page 75 points out the following:

"In our opinion Mr. Quiñones in testifying before us on November 21st, the parts previously transcribed lied deliberately. The statement taken by Prosecutor Figueroa Vivas on August 26, 1978, was at the witnesses own home. We cannot believe that this man felt in the environment of his own home pressured to lie as he pretends that he now be believed." Further on Prosecutor Villanueva at page 79 of his report states that:

"For said reason we must discard as not being worthy of any credit the statement of former Policeman Jesús Quiñones Quiñones."

K- Another person who allegedly has corroborated the falsehoods said by former Policeman Jesús Quiñones is Atty. William Rodríguez.

Atty. Rodríguez gave two sworn statements, on the 9th and 12th of December of 1980 before Prosecutor Osvaldo Villanueva and at no time did he state what he later stated before the Senate.

"Do you share the conclusions, are you in agreement with the conclusions of the report:

"Yes Sir, the report reflects in its totality the facts found in the investigation of this case"

Atty. Angel Figueroa Vivas, as Director of the S.I.B. had assigned Atty. William Rodríguez, so that as an S.I.B. agent, he take charge of the Investigation of the Cerro Maravilla case and substitute the policemen in the aforementioned investigation, offering him all the cooperation of the prosecutors. Towards December 1980, Atty. William Rodríguez had, or should have had knowledge of the charges which former Policeman Quiñones had made, for the first time in the press to Prosecutor Pedro Colton. In the El Nuevo Día newspaper, dated August 1, 1980, Prosecutor Colton denies same, since he also not taken any statement of this witness as he alleged.

L- In 1981, a complaint was received at the S.I.B. wherein it was alleged that Prosecutor Carlos Ramos Pantoja, who was assigned to the Bureau, was acting illegally.

As this person was a relative of Atty. William Rodríguez, Inspector Manuel Sanjurjo was assigned, so that together with agents of the F.B.I., would carry the investigation, with the order of not saying anything to Atty. Rodríguez.

When Prosecutor Ramos Pantoja became aware, he resigned his position. Atty. William Rodríguez became upset with Atty. Angel Figueroa Vivas inasmuch as he had not been notified of the aforementioned investigation of his relative.

Once Prosecutor Ramos Pantoja resigned, the attitude assumed by Atty. Rodríguez was of open

hostility towards the person of the Director Atty. Figueroa Vivas as well as the organization. Soon after he also resigned and he went into private practice. From there on he began this discrediting campaign against Atty. Figueroa Vivas.

In 1984 the Department of Justice of Puerto Rico, filed charges against Atty. Ramos Pantoja, which were later dismissed at the request of the Prosecution.

Atty. Angel Figueroa Vivas, treated witness, former Policeman Jesús Quiñones, with the utmost respect and consideration on the two occasions in which he intervened with him, on August 17, 1978 at the S.I.B. offices and on August 26, 1978 at his home in Ponce.

2- The respondent denies charge number 2 and alleges the following:

At no time did Atty. Figueroa Vivas consider that the pages that had been typed, had any value whatsoever, inasmuch as said witness, due to the alleged illness, had not had the opportunity of reading them, making the corrections which he deemed appropriate, or putting his initials on the pages and lastly signing them.

The respondent understands that as of the date in which the witness Jesús Quiñones appeared at the S.I.B. to give a statement the accepted practice in the Bureau was that statements of witnesses be perpetuated in stenographic symbols or directly on the typewriter as in the present case. If the statement of the witness was taken directly on the typewriter, once finished it was handed to the witness for him to read it. The witness proceeded to read it, make the observations which he deemed pertinent and the

corresponding corrections and if he is in agreement proceeds to initial each sheet of the pages writing his initials on the margins of each sheet and signing the last page, so as to comply with the statutory provisions, and give life to the statement as a public document as provided in 32 L.P.R.A. sec. 2045, repealed 1979.

"Manner of taking depositions

The depositions should be taken in the form of questions and answers. The words of the witness should be written in his presence, by the officer who takes the deposition, or by any person not a party to the matter, named by him. It may be taken stenographically, and, in this case, an ordinary writing should be prepared by the stenographer who took it. Upon finishing it, it will be read to the witness or will be read by him, who will correct it in any detail, if he so desires, he himself writing his corrections, or causing that they be written at the foot of the deposition, once done he will sign it."

Once the formalities established by existing law are complied with the document becomes a public document, as established by 31 L.P.R.A. sec. 3271.

"Public documents are those authorized by a notary or qualified public employee, with the solemnities required by law."

Further it is provided in 4 L.P.R.A. sec. 883 that the sworn statements shall be written and signed.

"The sworn statements according to §§ 881 to 885 of this title, will be made in writing and will be signed by the persons who make them."

Atty. Figueroa Vivas understood that the pages which had been taken on August 17, 1978 from former Policemen Jesús Quiñones Quiñones, had no value whatsoever, therefore he proceeded to take his statement on August 26, 1978, at his home in Ponce; since that due to the alleged illness of the witness, same had not concluded, the pages had not been read and no indication of any kind had been made nor had he written his initials and much less had he signed it as required by law, wherefore they were not, nor could these pages be considered as a public document or documentary evidence.

The conduct of Atty. Angel Figueroa Vivas shows a genuine interest in knowing the truth in the investigation of the events at Cerro Maravilla.

The questions formulated by each one of the witnesses from whom Atty. Angel Figueroa Vivas took statements, revealed that the questions presented are simple, objective and in a respectful manner.

Never was there an intention of any kind to go against the truth or of inducing any witness so that he would testify something other than what was of his own knowledge, all of that is inferred from an analysis of the questions formulated to the witnesses as appears from initialed sworn statements of these, compared with the frame of circumstances of the subsequent statements.

IV. Charges against Atty. Pedro Colton and Angel Figueroa Vivas

1. Respondent denies charge number one (1) and alleges the following:

Mr. Miguel Marte Ruiz, goes against the truth in stating that Atty. Figueroa Vivas interviewed him and took his statement together with Prosecutor Pedro Colton Fontán.

Atty. Angel Figueroa Vivas was sent copies of the statements given by Mr. Miguel Marte Ruiz, the first one dated July 26, 1978, before Prosecutor Santos Nigaglioni and the second one dated August 4 before Prosecutor Aurelio Miró Carrión. Both taken in stenographic symbols and certified by the stenographer.

At none of the takings of these statements was Atty. Figueroa Vivas present, therefore it is completely false that he posed any questions to the witness.

In 1979 Mr. Miguel Marte Ruiz appeared at the Bureau alleging that newspaperman Tomás Stella of the San Juan Star newspaper had insisted about four times in that he state the facts as he understood they were and not as really occurred and as he had stated.

It was assigned to Prosecutor Victor M. Acevedo Buceta who took the statement on April 19, 1979 and in it he states:

"P-Witness, what are the facts on which you indicate that newspaperman Tomás Stella insisted that you say and which are not true.

W-Number one, he believes that there was a second shootout and the supposed communication which I have during the shootout with San Juan, also trying to make me see that there had been a bunch of police agents within the Rikavisión facilities, which is not so, since

there was inside the facilities just one policeman who did not shoot.

P-How many times have you seen newspaperman Stella and he has insisted with you that the facts have happened as he states them and not as you have stated to the prosecutors.

W-About four times, the last one being around three weeks ago. He has gone to my residence uninvited and he has insisted repeatedly that I tell him what he presumes to be what happened and which is not so, instead that the truth is what I stated to the prosecutors" This witness, nine months after reaffirms what he had stated to the prosecutors in 1978, and insists in that newspaperman Tomás Stella wants him to change the version of the facts of Cerro Maravilla.

2- The respondent denies charge number two and alleges the following:

During the morning of August 17, 1978 Atty. Angel Figueroa Vivas was not at any meeting in the office of Prosecutor Pedro Colton Fontán and much less having been interviewed or that former Policeman Jesús Quiñones was interviewed in his presence.

It is totally false that he has been made any offer in the presence of Atty. Figueroa Vivas.

On page 22 of the statement of Mr. Jesús Quiñones presented before Prosecutor Villanueva, dated November 21, 1980 and signed on December 18, 1980, former Policeman Quiñones testifies:

"P-Did you go to San Juan?

W-Yes sir. That was on the 17th, if I recall correctly. I have it written down here, of August, yes sir. Thursday

August 17, that is, I went there to that place. I arrived at about 9:30 in the morning, thereabouts. When I arrived, that I went in, I went to the inside of the building where I had been subpoenaed . . . "

The subpoena was for an appearance at the Special Investigations Bureau, and therefore it is false that he can arrive at the Investigations and Criminal Processing Division and find the persons who he alleges were there.

Further the building of the Special Investigations Bureau, was the one who had the inner courtyard, not so the building of the Criminal Division.

Atty. William Rodríguez who was the assistant to Atty. Angel Figueroa Vivas for the aforementioned motives previously set out with the case of Atty. Carlos Ramos Pantoja became an enemy of Atty. Figueroa Vivas and began a discredit campaign against his person.

During the afternoon of August 17, 1978 an exhumation of the corpse of Arnaldo Darío Rosado was performed; reason for which Atty. Figueroa Vivas was not present during the morning and early afternoon hours.

That night he was present at the Institute of Legal Medicine, while the second autopsy was being performed on the deceased.

Atty. Angel Figueroa Vivas, reiterates that he was not at any meeting on the morning of August 17, 1978, at the offices of Prosecutor Pedro Colton Fontán.

That he did not see, nor interview former Police-man Quiñones and much less, that he was made any offer whatsoever in his presence.

3- The respondent denies charge number three and alleges the following:

What has been stated by former Policeman Quiñones is totally false, when he alleges that Prosecutor Pedro Colton Fontán threatened him, in the presence of Atty. Angel Figueroa Vivas, so that he would alter his testimony in Ponce on August 26, 1978.

Former Policeman Jesús Quiñones was treated with the utmost respect and consideration on August 26, 1978.

This is shown by the cordial manner which Mr. Quiñones had for the prosecutors.

He invited them to come into his home, showed them the patio and they sat down in the back part to speak while his parents arrived.

Once his parents arrived he introduced them, offered refreshments or coffee.

It is incredible that a former policeman, in his house, in the presence of his parents, wife and children, in a familiar environment, may feel so terrorized, pressured to lie, as it is pretended that he be believed.

4- The respondent denies charge four and alleges the following:

The report concerning Cerro Maravilla dated August 29, 1978 adjusts to the truth according to the evidence compiled, sworn statements of the witnesses, analysis and studies, expert studies and material evidence.

Atty. Angel Figueroa Vivas, as Director of the Bureau of Special Investigations, had the authority to make the corresponding study and determine the action which was appropriate according to the totality of the evidence compiled.

Because a second version arose subsequently, of how the facts occurred at Cerro Maravilla, on July 25, 1978, the investigators cannot be made responsible for same.

At all times, there was the utmost good faith of discovering the truth. At no time were the people of Puerto Rico mislead. What was found was reported, and our decision of ordering the dismissal, according to the evidence compiled, was the most correct and wise action at that moment.

Upon the second version arising, due to the fact that the case had not been submitted to the consideration of a Judge, they were able to be submit as murder cases for the first time.

In the same manner that the second version has appeared a third different version could arise of how the facts occurred, if it's that the witnesses again change their statements.

It is not true that in the course of the first investigation multiple omissions were incurred in.

a. When Atty. Figueroa Vivas, in 1978; assigned agents Atty. William Rodríguez, in charge and as an assistant, Atty. José A. Romo, they were given specific instructions to seize all pertinent evidence and that it be

submitted for the corresponding studies and analysis in the Criminal Laboratory.

b. At the moment that the S.I.B. began its intervention, in the present case, a week after the occurrence of the facts on July 25, 1978, the vehicle had been seized for investigation by the Investigating agents of the Puerto Rico Police and the Prosecutor. The aforementioned vehicle had been returned to its owner. A public controversy had risen with Mr. Ortiz Molina. We depended on the work performed by the agents of the Puerto Rico Police and the Ponce District Attorneys Office due to the fact that Mr. Julio Ortiz Molina had filed a civil suit for damages, in the Superior Court, Utuado Part, same was sworn on August 4, 1978.

c. From the statements under oath, taken in the first investigation, and the expert studies, it was determined that a firearm produced a similar pattern to that left on the clothing of the deceased Arnaldo Dario Rosado. With certainty it could not be affirmed categorically, who had killed Dario Rosado, taken into consideration the totality of the evidence compiled.

ch. From the evidence compiled in the first investigation it was determined which firearm was used to fire the projectile that killed Soto Arrivi.

d. The trajectory of the wounds of the body of one person, is not indicative of the position in which that person is found at the time of the events.

From the anatomical point of view Atty. Figueroa Vivas remembers, that the trajectory of the projectiles through the bodies of the deceased was described.

e. Specific instructions were given to the agent in charge of the investigation, Atty. William Rodríguez, to determine all the persons who had participated. The persons from whom statements were taken, were the ones that he notified that participated. The investigation of the events of July 25, 1978 at Cerro Maravilla, was one of multiple investigations which were in process, including the investigation concerning illegal actions on the part of members of the Puerto Rico Police.

f. The entire file was under the control of the investigating agents, including all the evidence. No agent of the S.I.B., nor any other person informed Atty. Figueroa Vivas of any blow received by the deceased Darío Rosado, except for those scrapes received as the consequence of having received a fatal shock and the body falling as declared by Forensic Pathologist Dr. René Rodolfo Rigal Riera.

Atty. Figueroa Vivas, remembers that when he took the statement of Dr. Rigal, who performed the first autopsy, he asked him the question if the corpse of Darío had any other wounds of hematoma or trauma in addition to those described by him in his report. Dr. Rigal informed that he did not have any trauma whatsoever, with the exception of the shotgun wound.

Likewise, he was asked the same question in regards of the corpse of Carlos Soto.

5- The respondent denies charge number five and alleges the following:

Atty. Angel Figueroa Vivas, as Director of the Special Investigations Bureau assigned to Atty. William Rodríguez, as agent in charge of the investigation of the

events of Cerro Maravilla, and his assistant in the technical aspect Atty. José A. Romo so that they would assist the prosecutors in the investigative process.

During the first investigation of these events absolutely no one informed that there was any person with knowledge of the facts, whose sworn statement had not been taken.

During this first investigation there were two witnesses one of them Mr. Miguel Marte Ruiz and policeman José Ríos Polanco, who testified that there had been no shooting from inside.

The mentioned dents were taken into consideration, they were photographed and were evaluated together with all the evidence.

The Respondent, honesty alleges that the charge that there being a witness with knowledge of the original facts no statement was taken from him is incorrect.

Instructions were given to the agent in charge, Atty. William Rodríguez to locate any person who had knowledge of the facts to take a statement from him. Of the witnesses which he brought to the attention of Atty. Angel Figueroa Vivas statements were taken from them.

Atty. William Rodríguez, in his sworn statement dated December 9, 1980 before Prosecutor Villanueva, testified the following:

"P. Tell me if you were able to observe marks of shots on the entrance gate to Rikavisión?

W. Yes sir.

P. Do you know how they were produced?

W. No sir."

If Atty. William Rodríguez, who was the agent in charge of the investigation, as of 1978, did not know how

those marks of shots on the pipes were produced nor does he mention the version of Mr. Modesto Delgado, much less so could Atty. Angel Figueroa Vivas who was the Director of the S.I.B. have known.

V. Conclusions and Prayer

Atty. Angel Figueroa Vivas, having been the person responsible for the initiation of the Investigation concerning corruption in Puerto Rico, and whose results are of public knowledge, has been the object of persecution since he occupied the management of the S.I.B, by the persons who were the object of the aforementioned investigations. Further the political emphasis given to the Maravilla case, has brought as a result, that Atty. Figueroa Vivas, as well as his family, have been submitted to great restlessness, sleeplessness, fears and even public scorn.

He has been and is a resourceful, simple, honest, person with a high sense of responsibility, very circumspect and a good father of family. This human being has dedicated the best years of his life to the public service of Puerto Rico.

WHEREFORE, very respectfully, it is prayed that this Honorable Court, order the dismissal of this complaint.
RESPECTFULLY SUBMITTED.

CERTIFIED: That on this same date I am sending copy of this document to the Honorable Alejandro Salgado Rivera, Special Independent Prosecutor, P.O. Box 1297, Hato Rey, P.R. 00919.

At Río Piedras, Puerto Rico on November 25, 1986.

ATTY. JESUS LUIS MALDONADO
Attorney for the Respondent
Acasia P1-13 Park Gardens
Río Piedras, P.R. 00926
Tel: 761-3169

IN THE SUPREME COURT OF PUERTO RICO

IN RE) NOS. MC-84-26
PEDRO COLTON FONTAN) MC-85-28
SANTOS NIGAGLIONI ESTRADA) CONCERNING:
AURELIO MIRO CARRION) PROFESSIONAL
OSVALDO VILLANUEVA DIAZ) CONDUCT
ANGEL FIGUEROA VIVAS)

**COMPLAINT CONCERNING PROFESSIONAL
CONDUCT**

TO THE HONORABLE SUPREME COURT:

COMES NOW the Special Independent Prosecutor
and respectfully states:

In keeping within Resolution of the 7th of the current
month in which we are ordered to file disciplinary com-
plaints against the attorneys of caption, through this writ
we present the following:

A. CHARGES AGAINST PEDRO COLTON FONTÁN

...

B. CHARGES AGAINST ANGEL FIGUEROA VIVAS

1. Lawyer Figueroa Vivas incurred in highly
improper conduct while he acted as investigating prosecutor
of the deaths caused by Police agents at Cerro Maravilla on
July 25, 1978, when around the afternoon of August 17, 1978
at the offices of the Special Investigations Bureau he inter-
vened with witness Jesus Quiñones Quiñones, exerting
undue pressure and pretending that the latter alter his
statement with relation to having heard two volleys of

shots during the incidents investigated; actions which persisted until the witness became ill and consequently had to be taken to a hospital.

This conduct of Figueroa Vivas constitutes one of the most serious modalities of improper intervention with witnesses: coercion. That represents a violation of the Canons 5, 15 and 35 which demand of the lawyer an original duty with the search for truth and justice, that of refraining from inducing witnesses to testify falsely and of adhering to the sincerity of the facts in examining witnesses. It constitutes further an obstruction of the proper administration of justice in violation of Canon 38 and it completely strays from the norms of excellence, diligence and competency embodied in Canon 18 of Professional Ethics.

2. Lawyer Figueroa Vivas incurred in highly improper conduct while he acted as investigating prosecutor of the deaths caused by police agents on July 25, 1978 at Cerro Maravilla at Jayuya, when he, as he himself has admitted, destroyed the sworn statement which witness Jesus Quiñones Quiñones had offered on August 17, 1978 to the effect that he had heard two volleys of shots during the incidents investigated.

His conduct in destroying what constituted evidence pertinent to the investigation is highly reproachable and constitutes a violation of Canon 35 of Professional Ethics.

C. CHARGES AGAINST PEDRO COLTON FONTÁN AND ANGEL FIGUEROA VIVAS

1. Attorneys Pedro Colton Fontán and Angel Figueroa Vivas incurred in highly improper conduct while they acted as investigating prosecutors of the deaths caused by police agents on July 25, 1991 at Cerro Maravilla in Jayuya when on or about August 3, 1978 while they were examining witness Miguel Marte Ruiz, in a highly persistent manner they suggested to him that he testify that no one had fired from the inside of the WRIK-TV facilities as well as that he had heard only one volley of shots during the incidents being investigated, when that was contrary to what the witness had informed to be the truth.

This conduct represents an improper intervention with the witness in violation of the lawyer's duty with regard to the search for the truth and of adhering to the sincerity of the facts while examining witnesses laid out in Canons 5, 15 and 35 of Professional Ethics. Further his conduct represents an obstruction to the proper administration of justice in violation of Cannon 38.

2. Attorneys Pedro Colton Fontán and Angel Figueroa Vivas incurred in highly improper conduct while acting as investigating prosecutors of the deaths caused by police agents at Cerro Maravilla in Jayuya on July 25, 1978 when on the morning of August 17, 1978 in the offices of the Investigations and Criminal Processing Division of the Department of Justice interfered with witness Jesus, Quiñones Quiñones offering him employment and pressuring him through the presence of third parties so that he would alter his testimony

with relation to having heard two volleys of shots during the investigated incidents.

This conduct of Figueroa Vivas constitutes one of the most serious modalities of improper intervention with witnesses: the offering of benefits to induce hem [sic] to testify falsely. That represents a violation of the Canons 5, 15 and 35 of professional conducts which demand of the lawyer a real compromise with the search for truth and justice, and of adhering to the sincerity of the facts in examining witnesses. It constitutes further an attack on judicial proceeding in violation of Canon 38 and the norms of excellence, diligence and competency embodied in Canon 18.

3. Attorneys Pedro Colton Fontán and Angel Figueroa Vivas incurred in highly improper conduct while they acted as investigating prosecutors of the deaths caused by police agents on July 25, 1991 at Cerro Maravilla in Jayuya when on August 26, 1978 they appeared by surprise in the early morning hours at the home of witness Jesus Quiñones Quiñones in Ponce and Colton Fontán in the presence and with the consent of Figueroa Vivas threatened the witness with formulating charges for divers crimes with the purpose that the former alter his testimony that he had heard two volleys of shots during the investigated incidents, thus managing to get from him the false answer desired by said prosecutors.

This conduct of Colton Fontán and Figueroa Vivas represents a violation of the commitment of all lawyers to search for the truth and of the norms of sincerity and

honesty which govern conduct towards witnesses pursuant to Canons 5, 15 and 35 of Professional Ethics. Further his conduct represents a violation of the norms of diligence excellence and competency demanded by Canon 18 as well as an improper obstruction of the orderly administration of Justice in violation of Canon 38.

4. Attorneys Pedro Colton Fontán and Angel Figueroa Vivas incurred in highly improper conduct while acting as investigating prosecutors of the deaths caused by police agents at Cerro Maravilla in Jayuya on July 25, 1978 in carrying out an investigation plagued with very important omissions and deficiencies with regards to the physical and objective evidence related to the scene: regarding the expert analysis of same: with regards to the evidence which arose from the corpses of the victims Arnaldo Darío Rosado and Carlos Soto Arriví: and with respect to the testimony perpetrated during the investigation. The results of this investigation were published by both attorneys in a press conference held on August 29, 1978.

With this conduct Colton Fontán and Figueroa Vivas misled the People of Puerto Rico in violation of their duty to be sincere and honest as required by Canon 35 of Professional Ethics; They obstructed the orderly administration of the judicial system in violation of Canon 38, violated their commitment to the search for the truth and the purpose that justice be made of Canon 5 and their duty to act in a competent and diligent manner, contrary to the norms of excellence required by Canon 18 of Professional Ethics.

5. Attorneys Pedro Colton Fontán and Angel Figueroa Vivas incurred in highly improper conduct while they acted as investigating prosecutors of the deaths caused by police agents on July 25, 1978 at Cerro Maravilla in Jayuya when on or about August 3, 1978 when they, knowing that civilian Modesto Delgado García related some impacts that appeared on the gate of station WRIK-TV with the facts being investigated, did not take a sworn statement to perpetuate his testimony, nor did they give that information any importance notwithstanding that same was highly relevant to the finding of the truth of what occurred.

This conduct of Colton Fontán and Figueroa Vivas constitutes a suppression of facts in violation of Canon 5 of Professional Ethics, a violation of the duty of being sincere and honest imposed by Canon 35 and an obstruction to the proper administration of justice in violation of Cannon 38 as well as a blatant violation of the duty to work with excellence, diligence and competence imposed by Canon 18.

....

BY VIRTUE OF THE FOREGOING we respectfully pray of this Honorable Court that after the corresponding processes it impose the disciplinary measures it deems appropriate on the respondent attorneys.

OATH

I, Alejandro Salgado Rivera, of legal age, married, Special Independent Prosecutor and resident of Arroyo, Puerto Rico, do state under oath that the actions and facts

herein charged to the respondent attorneys is known to me by information which has been provided under oath, which I believe certain or by documentary evidence which I believe to be true.

In witness whereof I swear and subscribe the foregoing today October 10, 1986 at San Juan, Puerto Rico.

/s/ Alejandro Salgado Rivera
ALEJANDRO SALGADO
RIVERA

Aff. # 15697

Sworn and subscribed to before me by Alejandro Salgado Rivera whose circumstances he states are those mentioned above and who is personally known to me, October 10, 1986 at San Juan, Puerto Rico.

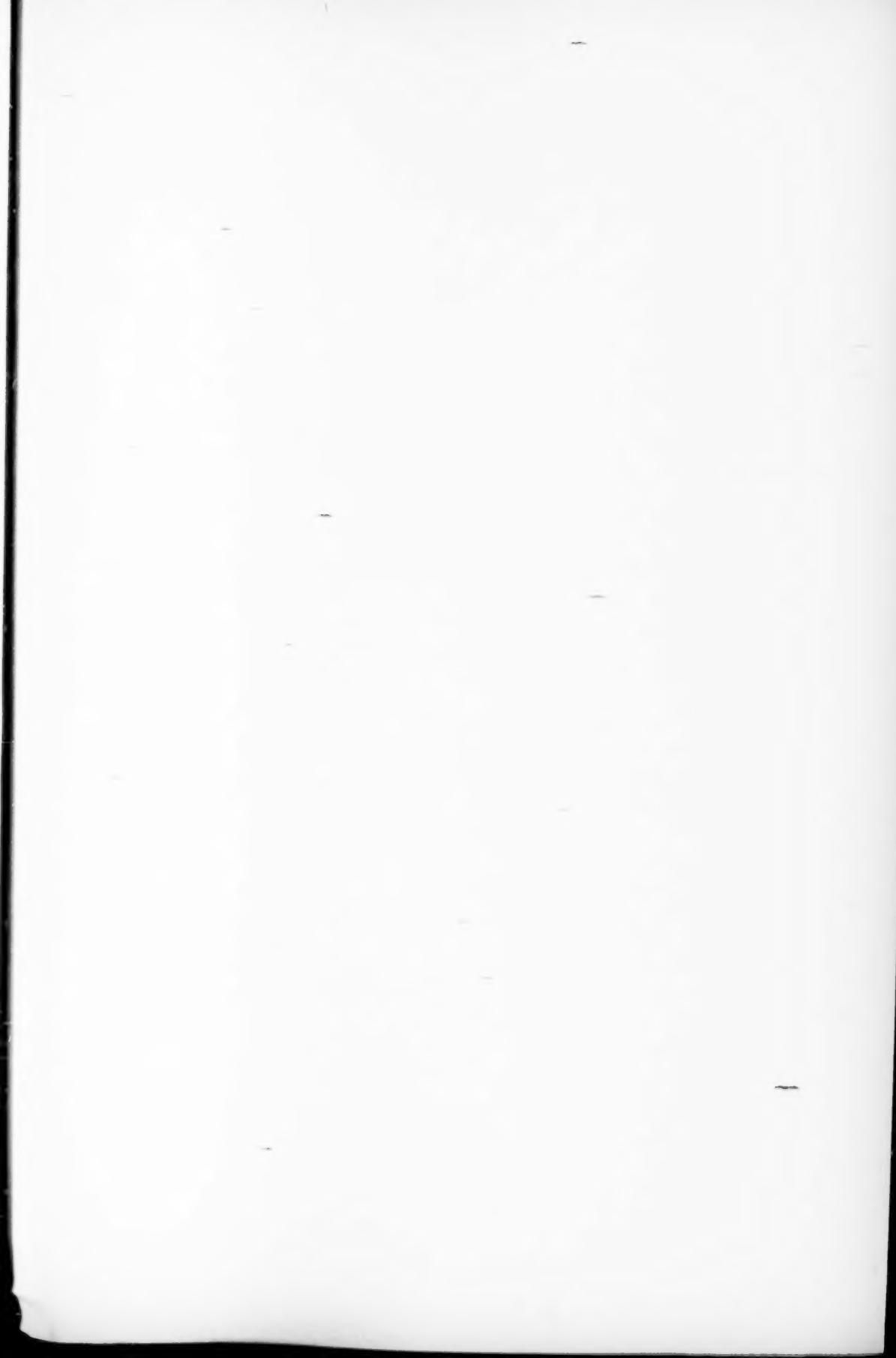
(SEAL)

/s/ _____
Interim Secretary Supreme Court

RESPECTFULLY SUBMITTED at San Juan, Puerto Rico on October 10, 1986.

Alejandro Salgado Rivera
Special Independent Prosecutor

/s/ *Maricarmen Ramos de Szendrey*
MARICARMEN RAMOS DE
SZENDREY
Delegated Prosecutor
Call Box 1297
Hato Rey, Puerto Rico 00919
Tels. 766-0480 and/or
766-2466



(2)
No. 91-373

Supreme Court, U.S.
FILED
OCT 8 1991
OFFICE OF THE CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1991

ANGEL FIGUEROA VIVAS,

Petitioner,

v.

PUERTO RICO,

Respondent.

BRIEF IN OPPOSITION
TO PETITION FOR CERTIORARI

ALEJANDRO SALGADO RIVERA
Independent Special Prosecutor
Commonwealth of Puerto Rico
Baldorioty 703
Hato Rey, Puerto Rico 00918

MARCOS A. RAMIREZ LAVANDERO
(*Counsel of Record*)
RAMIREZ & RAMIREZ
269 Ponce de León Avenue
Second Floor
Hato Rey, Puerto Rico 00917
Tel. (809) 758-5660

Attorney for Respondent

October 8, 1991

QUESTIONS PRESENTED

Whether this Honorable Court has jurisdiction to review the Judgement of the Supreme Court of Puerto Rico issued in this case when:

1. The alleged federal questions raised by petitioner were not properly or timely presented in the proceedings before the Supreme Court of Puerto Rico and were not addressed by that Court in its Opinion and Judgment.
2. The questions presented by petitioner are not substantial federal questions that warrant the exercise of this Court Certiorari jurisdiction.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
STATEMENT OF THE CASE	1
I. ARGUMENT	8
1. This Court has no Jurisdiction to Review the Judgment of the Supreme Court of Puerto Rico by way of Certiorari for the Following Reasons:	8
a. The alleged federal questions raised by petitioner were not properly or timely presented before the Supreme Court of Puerto Rico and were not addressed by that court	8
b. The questions presented in the Petition do not raise a substantial question	11
CONCLUSION	14

TABLE OF AUTHORITIES

CASES:	Page(s)
<i>Bowe v. Scott</i> , 233 U.S. 658, 664-65 (1914)	11
<i>Brady v. Maryland</i> , 373 U.S. 83, 91 (1963)	11
<i>Cardinale v. Louisiana</i> , 394 U.S. 437, 439 (1969)	8
<i>Colegio de Abogados de Puerto Rico v. Barny</i> , 109 D.P.R. 845, 847-48 (1980)	4
<i>Colón Berrios v. Hernández Agosto</i> , 716 F.2d 85 (1st Cir. 1983)	2,3
<i>Dobbert v. Florida</i> , 432 U.S. 282, 294 (1977)	12
<i>Ellis v. Dixon</i> , 349 U.S. 458, 460-62 (1955)	11
<i>Exxon Corp. v. Eagerton</i> , 462 U.S. 176, 181 n.3 (1983)	8
<i>Fuller v. Oregon</i> , 417 U.S. 40, 50 n.11 (1974)	8
<i>Hernández Agosto v. Carlos Romero Barceló</i> , 748 F.2d 1 (1st Cir. 1984)	2
<i>Illinois v. Begates</i> , 462 U.S. 213, 218-20 (1983)	8
<i>In Re Abella</i> , 67 D.P.R. 229, 238 (1947)	4
<i>In Re San Juan Star</i> , 662 F.2d. 108 (1st Cir. 1981)	2
<i>In Re Torres</i> , 30 D.P.R. 267, 268 (1922)	4
<i>Peña Clos v. Cartagena</i> , 114 D.P.R. 576 (1983)	2
<i>People v. González Malavé</i> , 116 D.P.R. 578 (1985)	2
<i>People v. Pérez Casillas</i> , 117 D.P.R. 380 (1986) ...	2
<i>People v. Pérez Casillas and Moreno Morales</i> , June 29, 1990	2
<i>Romero Barceló v. Hernández Agosto</i> , 115 D.P.R. 368 (1984)	2
<i>Soto v. Srio. de Justicia</i> , 112 D.P.R. 477 (1982) ..	2

Table of Authorities Continued

	Page
<i>Street v. New York</i> , 394 U.S. 576, 582 (1969)	8
<i>Withrow v. Larkin</i> , 421 U.S. 35, 56 (1975)	12,13

IN THE
Supreme Court of the United States
OCTOBER TERM, 1991

No. 91-393

ANGEL FIGUEROA VIVAS,

Petitioner,

v.

PUERTO RICO,

Respondent.

**BRIEF IN OPPOSITION
TO PETITION FOR CERTIORARI**

STATEMENT OF THE CASE

The petition for Certiorari docketed herein stems from the assassination by Puerto Rican police on July 25th, 1978 of two young advocates of independence for Puerto Rico. The events occurred on a remote mountain in rural Puerto Rico, Cerro Maravilla, where the deceased were led by an undercover agent of the Puerto Rico Police, presumably to commit acts of terrorism, although, they were woefully ill-equipped for the task.¹

¹ These young men had in their possession a pair of gloves, two handguns, a sky mask, a package of solid charcoal starter and a box of matches.

Minutes after the assassinations at a parade for the official celebration of Commonwealth Day, the governor of Puerto Rico at that time, Carlos Romero Barceló, promptly labeled the policemen present at Cerro Maravilla "heroes". Later, after controversies arose in the press over the official version of the police, two investigations were conducted by the Puerto Rico Department of Justice which absolved the policemen from responsibility and held that they had acted in self defense. Two investigations by United States Department of Justice reached the same results.

Unconvinced by the results of these probes and alarmed by their unprofessionalism and by the egregious contradictions in the testimonies of ocular witnesses, the Puerto Rico Senate decided to launch its own investigation of the matter.² The Judiciary Committee of the Senate promptly hired an experienced investigator, who for more than two years labored quietly but tenaciously, interviewing witnesses, gathering evidence and reviewing the reports of the four previous local and federal probes. Thereafter, the results of his investigation were presented to the Committee, via televised hearings. For a judicial

² See e.g. *In Re San Juan Star*, 662 F.2d. 108 (1st Cir. 1981); *Colón Berrios v. Hernández Agosto*, 716 F.2d 85 (1st Cir. 1983); *Hernández Agosto v. Carlos Romero Barceló*; 748 F.2d 1 (1st Cir. 1984). The opinions of the Supreme Court of Puerto Rico related to the so-called Cerro Maravilla case, apart from the judgment herein presented for review include the following: *Soto v. Srio. de Justicia*, 112 D.P.R. 477 (1982); *Peña Clos v. Cartagena*, 114 D.P.R. 576 (1983); *Romero Barceló; v. Hernández Agosto*, 115 D.P.R. 368 (1984); *People v. Pérez Casillas*, 117 DPR 380 (1986); *People v. González Malavé*, 116 D.P.R. 578 (1985); *People v. Pérez Casillas and Moreno Morales*, June 29, 1990.

recognition of the impact of these hearings on the Puerto Rico public opinion, see *Colón Berrios v. Hernández Agosto*, 716 F.2d 85, 86 (1st Cir. 1983).

The Senate investigation completely destroyed the conclusions of the four official probes. Relying on the testimony of ocular witnesses whom the previous local and federal investigators had slighted or disbelieved, of expert witnesses and of three policemen who participated in the Cerro Maravilla stake-out and testified under immunity, the Senate proved to all who wanted to see and hear that the policemen in Cerro Maravilla had apprehended the young men, beat them up and executed them by firing squad while the victims knelt, handcuffed. The investigation, moreover, showed conclusively that there had been a *cover-up at the local level* and raised the distinct possibility of cooperation by federal personnel in the cover-up.

As a result, the federal government launched a third investigation which culminated in criminal indictments against ten policemen who were active participants in the Cerro Maravilla operation. These policemen were convicted of perjury in depositions taken in federal proceedings and most are at present serving jail sentences. Also, as part of the Senate of Puerto Rico report on its investigation, the President of the Senate filed on May 13, 1984 in the Supreme Court of Puerto Rico a Complaint against petitioner and other prosecutors for unethical conduct incurred while participating in the Puerto Rico Department of Justice investigations of the murders at Cerro Maravilla. Thus, the disbarment proceedings which culminated in the permanent separation of the petitioner from the practice of the profession of law was initiated.³

³ A long time ago, the Supreme Court of Puerto Rico claimed

On June 5, 1984, the Supreme Court designated a panel of special examiners for the evaluation, formulation and sustainment of formal charges for improper professional conduct which would appear to be pertinent in this case. The panel was to submit to the Supreme Court a report upon which the Supreme Court would determine whether probable cause existed for the initiation of formal disciplinary proceedings against petitioner and other prosecutors. Appendix D to the Petition, page 163.

On January 18, 1985, the Legislature of Puerto Rico approved Law Number 1 to create the Office of Special Independent Prosecutor to investigate and criminally prosecute the persons who could have committed crimes in connection to the incident of Cerro Maravilla "and to carry out all pertinent civil administrative and professional ethics actions", related to Cerro Maravilla. The Statement of Motives of Law Number 1 states that the Special Independent Prosecutor shall examine "the actions of the highest ranking officials within the governments criminal investigation hierarchy" due to the "serious irregularities uncovered by the Senate in the previous criminal investigations." Appendix E of the Petition, page 166-167; Section 6 of the Law granted the Special Independent Prosecutor exclusive jurisdiction to investigate and prosecute those criminal,civil, administrative "and professional ethics actions -be deems appropriate", including those that had already begun.

its inherent power to discipline the members of the judicial profession and it has now become an establish element of Puerto Rican Law. See, *In Re Torres*, 30 D.P.R. 267, 268 (1922); *In Re Abella*, 67 D.P.R. 229, 238 (1947); *Colegio de Abogados de Puerto Rico v. Barny*, 109 D.P.R. 845, 847-48 (1980).

Appendix to the Petition, page 182. On March 14, 1985 the Supreme Court, pursuant to the terms of Law 1 and "to prevent undue duplicity or conflicts in the investigation or ulterior process in this matter" ordered the Special Independent Prosecutor to assume all the responsibilities regarding the disciplinary action against petitioner and the other prosecutors. Appendix to the Petition, page 187.

Thereafter, on October 7, 1986 the Supreme Court dismissed the complaint against one of the prosecutors and ordered the Special Independent Prosecutor to proceed to file disciplinary charges against petitioner and others. Appendix to the Petition, page 199. The charges were filed and answered by petitioner and others. On December 15, 1986 the Supreme Court of Puerto Rico appointed superior Court Judge Abner Limardo as Special Commissioner to hear and receive the evidence that the parties may offer regarding petitioner's and the other prosecutors professional conduct. The Special Commissioner held hearings for 24 days (see Appendix to the Petition, page 7 n.4), in which petitioner in particular did not present any witnesses. See Appendix to the Petition, page 141 n.9. The Special Commissioner submitted his report to the Supreme Court on May 21, 1987 and after the transcription of the evidentiary hearings and the submission of objections and comments to the report by petitioner and other prosecutors and finally the eliminate parties conclusions and arguments, the matter was considered submitted for the consideration of the Supreme Court of Puerto Rico. See Appendix to the Petition, pages 8-10.

On February 21, 1991 the Supreme Court of Puerto Rico issued its opinion and order regarding the dis-

ciplinary proceedings against petitioner and the other prosecutors.⁴ After an exhaustive analysis of the Special Commissioner's report, pertinent documents and transcripts of evidence, the Supreme Court concluded that petitioner Figueroa Vivas had incurred in grave unethical conduct. In particular, the Supreme Court concluded that Figueroa Vivas had coerced a witness and "exercised over him undue pressure" for him to alter his statement and later destroyed part of the initial sworn statement that the witness had given. The Supreme Court also concluded that together with another prosecutor, Colton Fontán, petitioner Figueroa Vivas offered the witness a job and later without prior notice went to the witness house and "threatened him with formally charging him with several crimes if he did not alter his statement". Appendix to the Petition, page 148. The Supreme Court concluded:

We do not harbor any doubts that the respondents Colton Fontán and Figueroa Vivas incurred, individually and concertedly, in a conduct tending to orient the investigation towards the theory of self-defense of the Police. In this task, they were successful for a limited time. To reach it they improperly in-

⁴ The Supreme Court states that the resolution of this disciplinary proceedings required the "patient reading and evaluation of a transcript of evidence in excess of three thousand (3,000) pages and the conscientious and careful analysis of documentary evidence consisting of two hundred and thirty three (233) exhibits corresponding to numerous sworn statements, photographs, notes, newspaper clippings, video cassettes, etc." The Supreme Court explained that this "monumental task" was simplified by the excellent report of the Special Commissioner. See Appendix to the Petition, page 10-11.

tervened with several witnesses and managed to change their testimony. Their conduct was an affront against basic ethical principles. Not only do they deserve our repulsion and censure, but the imposition of the severest disciplinary sanctions.

The Supreme Court decreed the permanent separation of petitioner Figueroa Vivas from the practice of the profession of law in the Commonwealth of Puerto Rico.

These are the facts which gave rise to the instant petition. Petitioner Figueroa Vivas, in the official performance of his duties as Director of the Special Investigations Bureau of the Department of Justice during the first investigation of Cerro Maravilla conducted by the Puerto Rico Department of Justice, was an integral part of a concerted effort to cover up the truth of what had really occurred in that remote mountaintop. Indeed, even at this late stage in his Petition before this Honorable Court and after the facts of Cerro Maravilla had been proven beyond a reasonable doubt in many different forums, petitioner still talks about a new "version" of what happened at Cerro Maravilla. Even the Supreme Court of Puerto Rico was surprised by the allegations of law of Figueroa Vivas because it gave the impression that he still questions "the credibility of certain witnesses which contributed to bringing the truth of what happened to the surface". Appendix to the Petition, page 130. In short, petitioner, an attorney, was an integral part of a conspiracy by the government of the Commonwealth of Puerto Rico in 1978 to cover up two vicious murders committed by the police at Cerro Maravilla.

ARGUMENT

1. This Court has no Jurisdiction to Review the Judgment of the Supreme Court of Puerto Rico by way of Certiorari for the Following Reasons:

- a. The alleged federal questions raised by petitioner were not properly or timely presented before the Supreme Court of Puerto Rico and were not addressed by that court.

In order for this court to have jurisdiction over the federal questions raised in the Petition for Certiorari the question must have been properly and timely presented in the State Court proceedings. *Cardinale v. Louisiana*, 394 U.S. 437, 439 (1969); *Illinois v. Begaes*, 462 U.S. 213, 218-20 (1983). A perjunctory examination of the opinion and judgment of the Supreme Court of Puerto Rico, which the petition asks this Court to review, reveals that the Court failed to pass expressly upon any federal question. The Court's decisions on the issues of law presented by petitioner and the other prosecutors was based exclusively on Puerto Rican law and cases. This court has held several times that when "the highest state court has failed to pass upon a federal question it will be assumed that the omission was due to lack of the proper presentation in the state courts, unless the aggrieved party in this court can affirmatively show the contrary". *Exxon Corp. v. Eagerton*, 462 U.S. 176, 181 n.3 (1983); *Fuller v. Oregon*, 417 U.S. 40, 50 n.11 (1974); *Street v. New York*, 394 U.S. 576, 582 (1969). This presumption is the reason for the requirement of Rule 21.1(h) that the petitioner seeking review of a State Court decision must specify in the Statement of the Case "the stage in the proceedings, both in the court of first instance and in the appellate court,

at which the federal questions sought to be reviewed were raised; the method or manner of raising them and the way in which they were passed upon by the court; . . .". Petitioner has failed to comply with Rule 21.1(h). With one exception, petitioner does not identify the stage and method in which the questions presented to this court were raised in the proceedings below and the way in which they were passed upon by the Supreme Court of Puerto Rico.

Indeed, the one exception to this failure by the petitioner is misleading and fails to comply with the requirement of proper and timely presentation. This exception refers to the question presented in the petition regarding the fact that the law clerk of one of the judges of the Supreme Court of Puerto Rico was the daughter of the attorney from the Special Independent Prosecutor's office that handled these disciplinary proceedings. The petition states that on March 21, 1991 "counselor Felipe Benicio Sánchez on behalf of Pedro Colton Fontánez, one of the prosecutors charged with disciplinary action" filed a motion before the Supreme Court of Puerto Rico requesting the reconsideration of the judgment on the ground stated above. This fails for the obvious reason that the alleged "federal question" was presented to the Supreme Court of Puerto Rico, not by petitioner, but by one of the other prosecutors charged with unethical conduct.

Apart from petitioners failure to comply with the requirements of Rule 21.1(h) the fact is that, with one exception, none of the other federal questions presented for review were even arguably properly or timely presented in the proceedings below. The alleged political motivation of the proceedings below,

question whether two judges of the Supreme Court should have disqualified themselves because they had been campaign directors for a gubernatorial candidate, and the question of whether the decision of the Supreme Court of both probable cause and judgment on the merits is a violation of petitioners due process, were never presented in the proceedings below.

The only question presented in the petition that could have been arguably presented in the proceedings below is whether the procedural change in the proceedings provoked by the approval of the law creating the office of the Special Independent Prosecutor constitutes a violation of petitioners due process rights under the Constitution of the United States. The fact is, however, that this question was also not properly and timely presented to the Supreme Court of Puerto Rico. In a motion titled "Motion Concerning Constitutional Questions", filed in the Supreme Court of Puerto Rico on July 23, 1987 petitioner states that "in the application of the referred law (the law creating the Office of the Special Independent Prosecutor) the due process of law of the respondent has been breached (guaranteed by the Constitutions of the Commonwealth of Puerto Rico and the United States of America)". Appendix to the Petition, page 254. Further, the motion states that the same law "constitutes an *ex-post-facto* law and violates the Constitution of the United States of America and of the Commonwealth of Puerto Rico". Again, in the same motion, petitioner states that in the application of the same law, the Special Prosecutor, "violated the due process of law of the here in respondent guaranteed by the Constitution of Puerto Rico and that of the

United States of America". Appendix to the Petition, page 255.

The proper presentation of a federal question in a State Court proceeding requires a reference to the particular clause of the Federal Constitution or statute relied upon as well as sufficient allegations regarding the rights claimed thereunder. The Supreme Court has held insufficient a mere reference to the "Constitution of the United States" or "due process of law". *Bowe v. Scott*, 233 U.S. 658, 664-65 (1914); *Brady v. Maryland*, 373 U.S. 83, 91 (1963) (separate opinion of Mr. Justice White). In *Ellis v. Dixon*, 349 U.S. 458, 460-62 (1955) this Court held that the claim that a particular organization had been the subject of unequal protection of the laws in violation of the Fourteenth Amendment was insufficiently presented in the proceedings below in the absence of an allegation that similar groups had been given more favorable treatment. It is obvious that petitioner general references in the proceedings below to "due process of law" and "the Constitution of the United States of America" or to the fact that the law creating the office of the Special Independent Prosecutor constitutes "*an ex-post-facto law*", are not sufficient for the *proper* presentation of a federal question in the proceedings below. There is no reference to any particular clause of the Federal Constitution, no explanation of why petitioners due process right have been violated and no indication of how a procedural change prejudiced petitioner in the proceedings below.

b. The questions presented in the Petition do not raise a substantial question.

The questions presented for review in the Petition do not present a substantial federal question. Indeed,

in our view, only two questions, merit any discussion whatsoever. The questions of alleged political motivation and the alleged need for judges of the Supreme Court to disqualify themselves from the proceedings below are totally frivolous.

The two remaining issues are easily disposed of. First, defendants alleges that the approval of Law Number 1 creating the Office of Special Independent Prosecutor changed the ongoing disciplinary proceedings below and constituted an *ex post facto* application of the law in violation of his due process rights. He failed however, to indicate in what way was he prejudiced by the change. When procedural changes have been challenged as invalid under the *ex post facto* constitutional ban this Court has compared the old and new "statutory procedures *in toto* to determine that the new may be fairly characterized as more onerous". *Dobbert v. Florida*, 432 U.S. 282,294 (1977). Law Number 1 changed nothing. As the Supreme Court of Puerto Rico stated in the opinion below, the statute "simply transferred the office of the Solicitor General to that of SIP [Office of the Special Independent Prosecutor] the investigative task and of processing the presentation and the processing of the complaint". Appendix to the Petition, page 142.

Second, the argument that his due process rights are violated because the Supreme Court of Puerto Rico determined probable cause against petitioner and then passed judgment on the charges of unethical conduct is equally untenable. The contention that the combination in the same body of the function of determining probable cause and deciding on the merits, without more, is violative of due process has been clearly rejected by this Court. In *Withrow v. Larkin*,

421 U.S. 35, 56 (1975) the Court held that judges who issue arrest warrants or preside at preliminary hearings for determination of probable cause were not barred from presiding over the criminal trial on the merits.

Finally, petitioner's attempt to portrait himself as victim was eloquently answered by the Supreme Court of Puerto Rico in the following words:

In so ruling, we are conscious that this type of process generates anguish and uneasiness. The action of itself, as well as the transpiration of time—it is easy to suppose—must have emotionally hurt the desired tranquility which we all desire. However lamentable that this reality may be, same is the consequence of the minimum rigor in a system of justice oriented towards the search for the truth and the imperative of fixing responsibilities.

Certainly, ultimately, this scene is more painful for him who does not fulfill his duties as a public officer. All this state of mind is unavoidable; a logical consequence of the illegal and unethical conduct of any person, whether it be a private citizen or an attorney or public official.

CONCLUSION

For the reasons stated, the Petition for Certiorari should be denied.

RESPECTFULLY SUBMITTED.

At San Juan, Puerto Rico, on October 8, 1991.

RAMIREZ & RAMIREZ
269 Ponce de León Ave.
2nd. Floor
Hato Rey, Puerto Rico 00917
Tel. (809) 758-5660

MARCOS A. RAMIREZ LAVANDERO

(3)
No. 91-373

Supreme Court, U.S.
FILED
OCT 21 1991
OFFICE OF THE CLERK

In The
Supreme Court of the United States
October Term, 1991

ANGEL FIGUEROA VIVAS,

Petitioner,
vs.

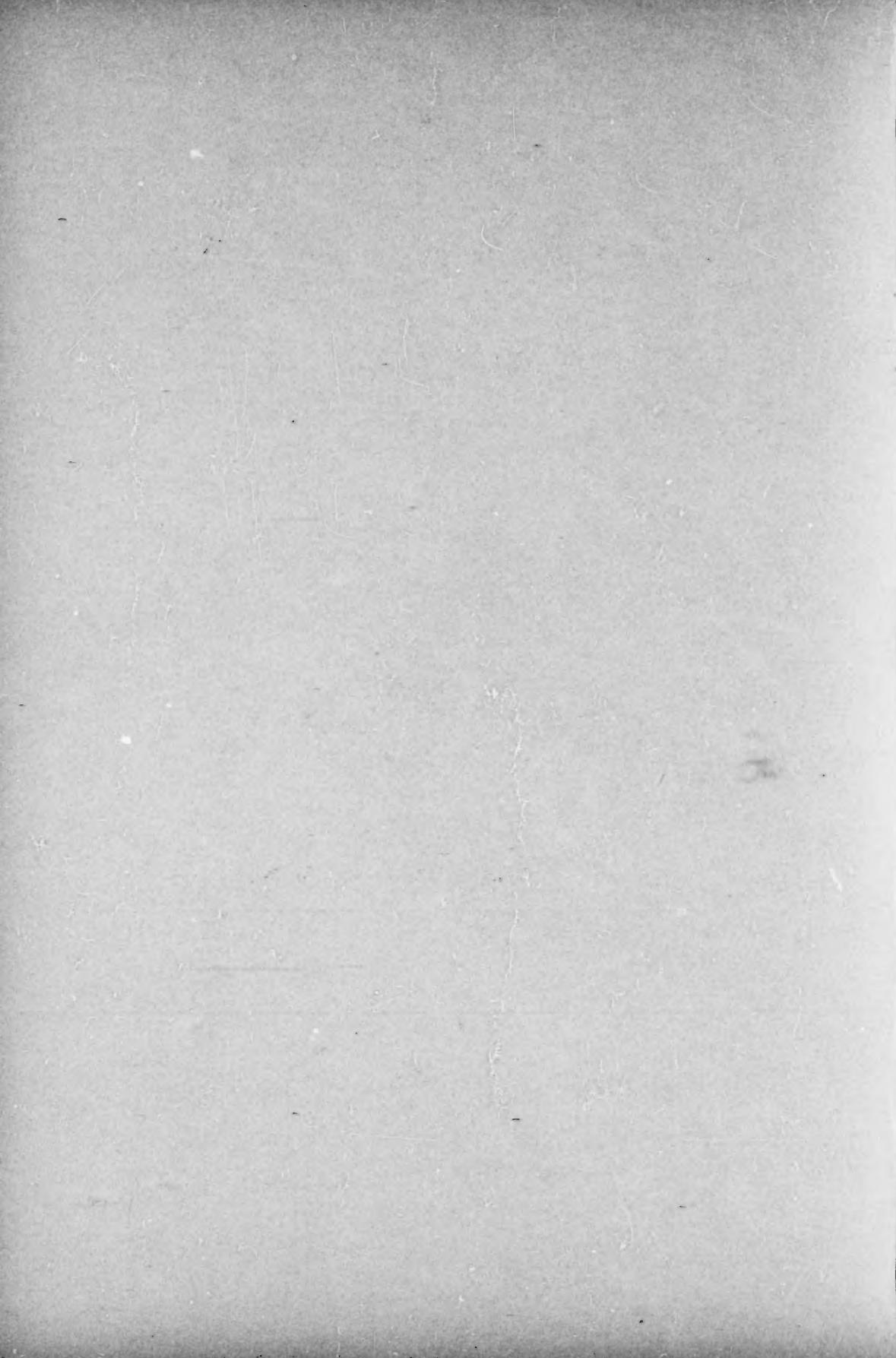
PUERTO RICO,

Respondent.

Petition For Writ Of Certiorari
To The Supreme Court Of Puerto Rico

REPLY BRIEF FOR PETITIONER

ISRAEL ROLDAN GONZALEZ
USDC-PR 115602
Attorney for Petitioner
44 Progreso Street
Aguadilla, P.R. 00603
Tel. (809) 891-1359



In The
Supreme Court of the United States
October Term, 1991

ANGEL FIGUEROA VIVAS,

Petitioner,
vs.

PUERTO RICO,

Respondent.

**Petition For Writ Of Certiorari
To The Supreme Court Of Puerto Rico**

REPLY BRIEF FOR PETITIONER

In its brief in opposition the Special Independent Prosecutor alleges (Br. Opp. 7) that petitioner "was an integral part of a conspiracy by the government of the Commonwealth of Puerto Rico in 1978 to cover up two vicious murders committed by the police at Cerro Maravilla". This is the first time in this long procedure against petitioner that he has been accused of conspiracy. The truth is that only one witness, Mr. Jesús Quiñones, alleges that petitioner exercised over him under pressure. There is sufficient evidence in the record that question the veracity of this sole allegation.

As to the Special Independent Prosecutor allegation that the federal questions presented by petitioner were

not properly presented before the Supreme Court of Puerto Rico, this is not so, as we presented in our petition (Appendix L, pp. 229, 231, 234, Appendix M, pp. 253, Appendix K, pp. 202-212; 225-227), on three different occasions the federal questions here presented were properly and timely presented before the Supreme Court of Puerto Rico. In the present case the Supreme Court of Puerto Rico acted as court of primary jurisdiction and not in its appellate function.

The Special Independent Prosecutor alleges that petitioner failed to indicate in which way he was prejudice by the change in the procedure. This is not so (Pet. 9-12) we sustain that Law Number 1 provoked that the Supreme Court of Puerto Rico changed the whole procedure with the sole purpose to make it more onerous to petitioner. And we believe that the President of the Senate had political motivation in doing so.

There is a big difference between the United States Supreme Court Opinion of *Withrow v. Larking*, 21 U.S. 35 (1975) and *In Re Murchison*, 349 U.S. 133 (1955). Here we are not talking that the judges of the Puerto Rico Supreme Court issue arrest warrant on the basis that there is a probable cause to believe that a crime has been committed (Withrow, *supra* at p. 724, 42 L. Ed. 2d). Here the Supreme Court of Puerto Rico after studying, examining, evaluating and pondering all the evidence, exonerated one of the complainers and determine cause against the petitioner. By doing so it passes judgment on the credibility that the evidence deserved. Since that moment we believe the Honorable Judges were completely contaminated with the whole evidence and the petitioner had no probability of prevailing.

As to the ex post facto issue, it must be clear that we believe that this is an ex post facto law with purely political motivation and that as such, it violate petitioner's constitutional rights. The President of the Senate, as we said before, abused his powers and presented a new law with the only purpose to guarantee that his political points of view were to prevail in the process against petitioner. Due Process prohibits Congress from enactments which shock sense of fair play (*Radio Position Finding Corp. v. Bedix Corp.*, D.C. Md. 1962, 205 F.Supp. 850. Affirmed 83 S. Ct. 548, 371 U.S. 577).

We also want to respectfully call the attention of this Honorable Court that in his brief in opposition the Special Independent Prosecutor does not challenge our allegation that the Supreme Court of Puerto Rico adjudicate the case of petitioner solely of a matter of credibility unjustly.

The Special Independent Prosecutor in his brief does not mention our allegation contained at page 29 of our brief as to how independent is the Special Independent Prosecutor. It will be fair to bring up this issue once more since to our surprise the counsel of record appearing for the Special Independent Prosecutor is brother counsel Marcos A. Ramirez Lavandero, who was also the attorney that represented the President of the Senate when he presented two motions submitting evidence against the herein petitioner in the criminal case that was filed against him. (Pet. 13).

Justice must satisfy the appearance of justice. *Offut v. U.S.*, 348 U.S. 11.

Respectfully submitted,

ISRAEL ROLDAN GONZALEZ
USDC-PR 115602
Attorney for Petitioner
44 Progreso Street
Aguadilla, P.R. 00603
Tel. (809) 891-1359

